110

No. 06-11206

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DEONDERY CHAMBERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX: VOLUME I OF II

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 4:05-cr-40044-JLF-1

UNITED STATES OF AMERICA,
Plaintiff,

v.

DEONDERY L. CHAMBERS, II,
Defendant.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
07/06/2005	1	INDICTMENT as to Deondery Lazar Chambers, II (1) count 1. (jep) (Entered: 07/06/2005)
		* * *
07/27/2005	6	Minute Entry for proceedings held before Judge Philip M. Frazier: Initial Appearance and Arraignment as to Deondery Lazar Chambers II (1) Count 1 held on 7/27/2005. Attorney Daniel G. Cronin for Deondery Lazar Chambers, II present, and FPD's office appointed. Not guilty plea entered. Oral motion for pretrial detention set for hearing 8/1/2005, 09:15 AM before Judge Frazier in Benton. Final Pretrial Conference set for 9/26/2005 09:30 AM in Benton Court House before Judge James L. Foreman. Jury Trial set for 10/3/2005

DATE	NO.	PROCEEDINGS
		09:30 AM in Benton Court House before Judge James L. Foreman. (Tape #FTR.) (krm) (Entered: 07/28/2005)
		* * *
07/27/2005	10	ORDER OF TEMPORARY DETENTION as to Deondery Lazar Chambers, II. Detention Hearing set for 8/1/2005 09:15 AM in Benton Court House before Judge Philip M. Frazier. Signed by Judge Philip M. Frazier on 7/27/2005. (krm) (Entered: 07/28/2005)
		* * *
07/29/2005	12	INFORMATION TO ESTABLISH PRIOR CONVICTION as to Deondery Lazar Chambers, II (Norwood, George) (Entered: 07/29/2005)
		* * *
08/01/2005	14	Minute Entry for proceedings held before Judge Philip M. Frazier: Detention Hearing as to Deondery Lazar Chambers, II held on 8/1/2005. Motion for pretrial detention granted. Order to enter. (Court Reporter Jane Northcutt, Northcutt Reporting.) (krm) (Entered: 08/01/2005)
08/03/2005	15	ORDER OF DETENTION as to defendant [Deondery Lazar Chambers, II]; defendant COMMITTED to the custody of the Attorney General of the United States. Signed by Judge Philip M. Frazier on 8/1/05. (mta) (Entered: 08/03/2005)

DATE	NO.	PROCEEDINGS
		* * *
11/17/2005	26	Minute Entry for proceedings held before Judge J. Phil Gilbert (vlm): Change of Plea Hearing as to Deondery Lazar Chambers, II held on 11/17/2005. Defendant entered open plea to count 1 of the Indictment. Sentencing set for 2/27/2006 01:30 PM in Benton Court House before Judge James L. Foreman. Defendant remanded to the custody of the U.S. Marshal. (Court Reporter Jane McCorkle) (vlm) (Entered: 11/17/2005)
		* * *
04/12/2006	29	SEALED OBJECTION TO PRESENTENCE INVESTIGATION REPORT by Deondery Lazar Chambers, II (Kavanaugh, Phillip) (Entered: 04/12/2006)
		* * *
05/11/2006	33	SENTENCING MEMORANDUM *SEALED* as to Deondery Lazar Chambers, II (Attachments: # 1 # 2 # 3 # 4 # 5)(Kavanaugh, Phillip) (Entered: 05/11/2006)
05/11/2006	36	SEALED RESPONSE by USA as to Deondery Lazar Chambers, II re 29 Objection to Presentence Investigation Report (Norwood, George) (Entered: 05/11/2006)
05/12/2006	37	Minute Entry for proceedings held be-

DATE	NO.	PROCEEDINGS
		ore Judge G. Patrick Murphy (vlm): Sentencing held on 5/12/2006 for Deondery Lazar Chambers, II (1), Count(s) 1; defendant committed to the custody of the USBP for a term of 188 months. Upon release from imprisonment, defendant on supervised release for a term of 5 years. Defendant to pay a $100.00 special assessment and a $750.00 fine (interest waived). Court grants the Government's oral motion to temporarily withdraw Exhibit 2 (videotape) and it shall be substituted with a copy. Defendant remanded to the custody of the U.S. Marshal. (Court Reporter Jane McCorkle) (vlm,) (Entered: 05/12/2006)
05/12/2006	38	EXHIBIT/WITNESS LIST as to Deondery Lazar Chambers, II regarding 5/12/06 sentencing hearing (vlm,) (Entered: 05/12/2006)
05/12/2006	39	SEALED PRESENTENCE INVESTIGATION REPORT as to Deondery Lazar Chambers, II (vlm,) (Entered: 05/12/2006)
05/12/2006	40	SEALED ADDENDUM TO PRESENTENCE INVESTIGATION REPORT as to Deondery Lazar Chambers, II (vlm,) (Entered: 05/12/2006)
		* * *
05/16/2006	42	JUDGMENT as to Deondery Lazar Chambers, II. Signed by Judge G. Patrick

DATE	NO.	PROCEEDINGS
		Murphy on 5/16/06. (tjh) (Entered: 05/17/2006)
		* * *
05/17/2006	44	NOTICE OF APPEAL by Deondery Lazar Chambers, II re 42 Judgment Filing fee $ 455. (Kavanaugh, Phillip) (Entered: 05/17/2006)
		* * *
05/22/2006	47	USCA Case Number 06-2405 assigned as to Deondery Lazar Chambers, II 06-2405 for 44 Notice of Appeal - Final Judgment. (vlm,) (Entered: 05/22/2006)
06/16/2006	48	TRANSCRIPT of Change of Plea as to Deondery Lazar Chambers, II held on November 17, 2005 before Judge Gilbert. Court Reporter: Jane McCorkle. This is a text entry only - no document is attached. The transcript is available for review in the Clerk's Office. Please contact the court reporter listed above for copies. (msd,) (Entered: 06/16/2006)
06/16/2006	49	TRANSCRIPT of Sentencing as to Deondery Lazar Chambers, II held on May 12, 2006 before Judge Gilbert. Court Reporter: Jane McCorkle. This is a text entry only - no document is attached. The transcript is available for review in the Clerk's Office. Please contact the court reporter listed above for copies. (msd,) (Entered: 06/16/2006)
		* * *

DATE	NO.	PROCEEDINGS
02/27/2007	57	MANDATE of USCA (certified copy) as to Deondery Lazar Chambers, II re 44 Notice of Appeal - Final Judgment affirming the judgment of the District Court. (bkl) (Entered: 02/27/2007)

* * *

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 06-2405

UNITED STATES OF AMERICA,
Plaintiff,

v.

DEONDERY L. CHAMBERS, II,
Defendant.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
5/17/06	Criminal case docketed. [06-2405] [1987320-1] Transcript information sheet due 5/30/06. Appellant's brief due 6/26/06 for Deondery L. Chambers. (kell)
	* * *
7/10/06	Filed 15c appellant's brief by Deondery L. Chambers, per order. Electronically Transmitted. [06-2405] [0-0] (leti)
	* * *
8/7/06	Filed 15c appellee's brief by USA. Disk filed. Electronically Transmitted. [06-2405] [0-0] (scze)
8/16/06	Filed 15c appellant's reply brief by Deondery L. Chambers. Electronically Transmitted. [06-2405] [0-0] (leti)
	* * *

DATE	PROCEEDINGS
11/1/06	Filed Appellee USA Citation of Additional Authority, per CR 28(e). [06-2405] [2041637-1] (scze)
	* * *
12/13/06	Case heard and taken under advisement by panel: Circuit Judge Richard A. Posner, Circuit Judge Daniel A. Manion, Circuit Judge Terence T. Evans. [06-2405] [2054827-1] (kare)
	* * *
1/9/07	Filed opinion of the court by Judge Posner. AFFIRMED. Circuit Judge Richard A. Posner, Circuit Judge Daniel A. Manion, Circuit Judge Terence T. Evans. [06-2405] [1987320-1] (hard)
1/9/07	ORDER: Final judgment filed per opinion opinion. With costs: n. [06-2405] [2062429-1] (hard)
1/22/07	Filed 30c Petition for Rehearing and Petition for Rehearing Enbanc by Appellant Deondery L. Chambers. Dist. [06-2405] [2067288-1] (fern)
1/26/07	Sent clerk's copy of request to Appellee USA requesting 30c of their Answer to the Petition for Rehearing and Petition for Rehearing Enbanc filed by the appellant on 1/22/07. [06-2405] [2069130-1] Answer to Petition for Enbanc Rehearing due 2/9/07 for USA. (fern)

DATE	PROCEEDINGS
2/12/07	Filed 30c Answer of Appellee USA to Petition for Rehearing and Petition for Rehearing Enbanc. Dist. [06-2405] [2074209-1] (fern)
2/16/07	ORDER: Appellant Deondery L. Chambers Petition for Rehearing and Petition for Rehearing Enbanc is DENIED. [06-2405] [2067288-1] (fern)
2/26/07	MANDATE ISSUED AND ENTIRE RECORD RETURNED. (Contents returned: 1 vol. pleadings; 2 vol. transcripts; 1 vol. exhibits; 1 env. in camera.) [06-2405] [1987320-1] (cove)
	* * *
4/25/08	Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari and GRANTING motion for leave to proceed on appeal in forma pauperis. Supreme Court Case No.: 06-11206. [06-2405] [2210897-1] (alys)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

[Filed 07/06/2005]

Criminal No. 05-40044-JLF

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DEONDERY LAZAR CHAMBERS, II,
a/k/a Deondery L. Chambers,
Defendant.

INDICTMENT

THE GRAND JURY CHARGES:

On or about May 31, 2005, in Jefferson County, within the Southern District of Illinois,

DEONDERY LAZAR CHAMBERS, II,
a/k/a Deondery L. Chambers,

defendant herein, who had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, a felony under the laws of the State of Illinois, on or about July 15, 1998, to wit: Robbery and Aggravated Battery, in the Circuit Court for the Second Judicial Circuit, Jefferson County, Illinois, Case No. 98-CF-109, did knowingly possess in and affecting interstate commerce a firearm, that is: a Smith and Wesson, Model 66, .357 Magnum caliber revolver, serial number 9K6476, all in violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

A TRUE BILL:

/s/ John Dantel
FOREPERSON

/s/ Ronald J. Tenpas
RONALD J. TENPAS
United States Attorney

/s/ George A. Norwood
GEORGE A. NORWOOD
Assistant United States Attorney

Recommended Bond: Detention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

[Filed 07/29/2005]

Criminal No. 05-40044-JLF

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DEONDERY LAZAR CHAMBERS, II,
a/k/a Deondery L. Chambers
Defendant.

INFORMATION CHARGING PRIOR OFFENSES

Comes now the United States of America, by and through its attorneys, Ronald J. Tenpas, United States Attorney for the Southern District of Illinois, and George A. Norwood, Assistant United States Attorney, pursuant to Section 924(e)(1) of Title 18, United States Code, and informs the Court that the government believes that the defendant qualifies as an armed career criminal within the meaning of Section 924(e)(1), stating as follows:

1. That the defendant has been charged in the indictment with a violation of Title 18, United States Code, Section 922(g)(1).

2. That on July 15, 1998, in the Circuit Court, Jefferson County, Illinois, defendant was convicted of Robbery and Aggravated Battery in Case No. 98-CF-109.

3. That on February 24, 1999, in the Circuit Court, Jefferson County, Illinois, defendant was convicted of Escape in Case No. 99-CF-47.

4. That on June 30, 1999, in the Circuit Court, Jefferson County, Illinois, defendant was convicted of Unlawful Delivery of a Controlled Substance within 1000 feet of Public Housing in Case No. 99-CF-157.

WHEREFORE, the United States of America hereby files this Information Charging Prior Offenses to subject the defendant to the enhanced provisions of Title 18, United States Code, Section 924(c)(1) upon his conviction under the Indictment.

/s/ George A. Norwood
GEORGE A. NORWOOD
402 West Main Street, Suite 2A
Benton, IL 62812
Phone: (618) 439-3808 Ext. 111
Fax:. (618) 439-2401
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CR No. 05-40044-JLF

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DEONDERY LAZAR CHAMBERS, II,
a/k/a Deondery L. Chambers,
Defendant.

ORDER OF DETENTION

FRAZIER, Magistrate Judge:

Defendant appeared with counsel at a detention hearing on August 1, 2005. He is indicted as a felon in possession of a firearm.

There is a possibility that defendant faces a life sentence as an armed career criminal. In any event, his extensive criminal history precludes bond. There is a serious risk that he would either flee or pose a threat to a witness against him in the underlying offense. There is very strong evidence to believe that during an argument he obtained a firearm owned by him and fired it in the air to make an impression on the person with whom he was arguing. No condition or combination of conditions attending pretrial release could sufficiently alter judgment to prevent this from recurring. Detention is GRANTED.

IT IS, THEREFORE, ORDERED THAT:

1. The defendant shall be COMMITTED to the custody of the Attorney General of the United

States for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

2. The defendant shall be AFFORDED reasonable opportunity for private consultation with his attorney or any person hired by his attorney for the purpose of preparing a defense; and

3. On Order of a Court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which the defendant is confined shall DELIVER the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

DATED: August 1, 2005.

/s/ Philip M. Frazier
PHILIP M. FRAZIER
United States Magistrate Judge

[1]IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 05-CR-40044

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DEONDERY LAZAR CHAMBERS,
Defendant.

REPORT OF PROCEEDINGS

Sentencing Hearing

BE IT REMEMBERED AND CERTIFIED that heretofore on May 12, 2006, the same being one of the regular judicial days in and for the United States District Court for the Southern District of Illinois, Honorable G. Patrick Murphy presiding, the following proceedings were had in open court in Benton, Illinois, to-wit:

APPEARANCES

Mr. George Norwood
Asst. U.S. Attorney — For the Plaintiff

Mr. Phillip J. Kavanaugh
Federal Public Defender — For the Defendant

JANE McCORKLE
Official Court Reporter
U.S. District Court
301 W. Main Street
Benton, Illinois 62812

[2] INDEX

WITNESSES FOR THE GOVERNMENT	DIRECT	CROSS	REDIRECT	RECROSS
Kevin. Jackson	37			
WITNESSES FOR THE DEFENSE:				
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[3] THE CLERK: Court calls United States of America versus Deondery Lazar Chambers, case number 05-40044. Are the parties ready?

MR. NORWOOD: The government is present by George Norwood, Assistant U.S. Attorney. We are ready to proceed.

MR. KAVANAUGH: The defendant, Deondery Chambers, is present with his counsel, Phil Kavanaugh. We are ready to proceed.

THE COURT: Let the record show that counsel are present. Mr. Chambers is here with Mr. Kavanaugh, and Mr. Norwood is here, also.

Now the matter is set for sentencing this morning. And in the ordinary course of business, the Probation Department prepared the usual detailed written Presentence Investigation Report. There were objections filed. There was an addendum to the Presentence Investigation Report. I think that's been provided to both sides.

Now, we will get to the objections that are going to require a factual, some factual findings, but as I understand the case, here is where we are. First of all, if the defendant qualifies as a career offender with his Criminal History Category of VI and giving him the three points for cooperation that he would be entitled to, he Comes out as a 31. And that seems to the Court, and I stand here to be corrected, but if that's the case, then the other [4] objections really don't amount to anything because in that event, I think he has a base offense level of 24.

The Probation Department and the government have him for an additional four points on top of that because of the aggravated use of a firearm and then

another two points on top of that for reckless endangerment, which would bring him up to a 30. And then he would get his three points off, which would bring him down to a 27.

So it seems to the Court that the most important matter would be to determine, first, whether he is a career offender. Mr. Norwood, have I stated this correctly?

MR. NORWOOD: The government believes so. If he is an armed career criminal, there will be a minimum sentence of 15 years and a maximum sentence of life. If there is not there will be a maximum sentence of 10 years under the felon in possession statute. So I think you're correct with respect that would be dispositive of the legal argument. It would be dispositive of most of the issues. I'm not sure. I believe the defendant will appeal.

THE COURT: Well, I'm still going to make the conditional finding. There's no question about that. I'm not going to leave anything undone.

MR. NORWOOD: Okay.

THE COURT: But that would be the first issue for the Court.

[5] MR. NORWOOD: Then I agree with the Court, Judge.

THE COURT: Mr. Kavanaugh.

MR. KAVANAUGH: There is a slight distinction. In that if the Court finds the defendant used or possessed the firearm in connection with a crime of violence, then the armed career criminal base offense level would be 34 minus three for acceptance. If the Court finds that he didn't possess the firearm in connection with a crime of violence, then it would be 33. It's an

eight-month difference, Your Honor. If he's a 34 minus three, it's 188 as the low. If he's a 33 then it would be 180 as the low part, 180 to 210. Other than that the Court's correct in its observations.

THE COURT: All right. We will discuss that as need be, but the first question for the Court is you have the predicate offense for the career offender statute. Now your objection is a simple legal argument that the escape for which he was convicted does not qualify as a violent crime.

MR. KAVANAUGH: That's correct, Your Honor.

THE COURT: And while one might think that to be the case, if my memory doesn't fail me, we have the *Bryant* case by Judge Kanne who says that it is, and I believe there's at least one other case in the Seventh Circuit. Is that your understanding of the law?

MR. KAVANAUGH: That was the law until we've had *Shepard* and *Hagenow*. I believe that those two cases somewhat [6] alter—

THE COURT: Is that the Ninth Circuit case?

MR. KAVANAUGH: No, *Hagenow* is a Seventh Circuit case and *Shepard*, obviously, is a Supreme Court case.

THE COURT: Tell me about the Seventh Circuit case that you think changes it.

MR. KAVANAUGH: Well, *Hagenow* was decided on August the 31st of 2005. It stands for the proposition that when you have a generic crime like burglary or escape or something like that, the issue of whether or not the conduct, the offense conduct involves a potential risk of physical injury to another or has as an element the use or attempted use of threatened

physical force, the sentencing court is to look at the actual charging instrument itself to see what kind of generic conduct was charged in the state court.

In this case Mr. Chambers was convicted of escape, but the actual indictment charges him with failure to report for a periodic imprisonment. In other words, he was sentenced to weekends in jail, and he didn't show up for three of them. On the face of the charging document itself, it's pretty clear that there is no violence, no attempted violence, no suggestion of violence. He just didn't come to report to jail for three weekends.

Ultimately, in that case he was charged with escape. He pled guilty to it. Was continued on probation [7] and they just gave him four additional weekends to serve subsequent to the plea on the escape charge. There was no indication in that at all that there was any violence involved.

There's another case that we've cited in the sentencing memorandum, and that's another Seventh Circuit case which was decided on December the 19th, 2005, *United States versus Sperberg*, S-P-E-R-B-E-R-G, and that discusses this issue, also. And it says on page 2 of the printout—I don't have the exact page number, but it says, "When a law specifies multiple ways to commit an offense, one within the scope of a recidivism enhancement and the other not, the federal court may examine the charging papers and plea colloquy to determine which variety of offense the conviction reflects." to see whether or not in this case this type of escape is violent.

It's pretty clear from the record in state court, Your Honor, that all he did was just didn't show up on time for three weekends.

THE COURT: And you have the indictment there?

MR. KAVANAUGH: Yes, sir.

THE COURT: And what does the indictment provide?

MR. KAVANAUGH: It, basically, charges a violation of—let's see. First, is a violation of 730 ILCS 5/3-6-4, which basically penalizes a person for failure to return from [8] furlough or work release.

THE COURT: All right.

MR. KAVANAUGH: Here's a copy of the statute.

THE COURT: You will provide that to my clerk.

MR. KAVANAUGH: I do have the indictment. I left it across the street.

THE COURT: For the moment I will take it as stated. I have no reason not to.

All right, Mr. Norwood. It doesn't sound like we have here what the escape cases talk about. The cases talk about because every escape involved a serious potential risk of physical injury to another, and what I have in mind is I'm trying to give a good example. But someone knocking the guard in the head and crawling over the fence at Marion and making a go for it, and it sounds like here the defendant just simply failed to report, which didn't involve any potential risk of physical injury.

MR. NORWOOD: Well, Your Honor, a couple things. First, the Seventh Circuit has rejected that argument years ago in the *Bryant* case.

THE COURT: That's Judge Kanne's case.

MR. NORWOOD: Yes, Your Honor. Where that very argument was raised by the defendant objecting to

the categorical approach of the Seventh Circuit. And all escapes, no matter if they're walk-away or failure to report [9] or the old hitting on the guard in-the-head escape, they are all crimes of violence.

I mean that's—I'll read from—I know the Court's read the *Bryant* opinion, but I mean *Bryant*—here's what the court said. "*Bryant* asks this Court to redefine our decision in *Franklin* by holding that not every crime of escape amounts to a crime of violence. He urges this Court to instead follow a fact-specific approach when determining if a particular crime of escape should be categorized as a crime of violence. Specifically, he argues that the type of escape for which he was charged—failure to return to a halfway house after being absent on a work release—is more appropriately thought of as failure to return than an escape. According to his reading the 'failure to return' to a halfway house after being absent without permission prevents so much less of a risk of violence that it must be considered different and distinct from a 'bust-out' or 'slither-away' type of escape."

The Seventh Circuit rejected this very argument.

THE COURT: And you say, too, that the more recent cases cited by the defendant simply do not trump *Bryant*.

MR. NORWOOD: Absolutely not. I could not find a published Seventh Circuit opinion involving escape, but I have found for the Seventh Circuit in the case, and it cites the case of *United States versus Lewis*, but the *Booker* [10] decision did not change this categorical approach to escape. *Booker* had to do with—

THE COURT: *Booker* has nothing to do with this.

MR. NORWOOD: Nothing has changed in the Seventh Circuit. Whether the Ninth Circuit in *Piccolo* considers it is one thing, but the Seventh Circuit has always considered escapes of any kind, walk-aways, failures to report or an escape or they are busting out of a prison all the same because of the risk of violence. And this Court knows what that risk of violence is, in any escape, is when the officers go to apprehend that person, they don't know why that person failed to report or walked away or escaped. They are risking their lives apprehending somebody who may not want to either report to prison or for whatever reason, and the Seventh Circuit has said it's a powder keg.

THE COURT: In short your response is that irrespective of the arguments, the Seventh Circuit still adheres to *Bryant*.

MR. NORWOOD: Absolutely.

THE COURT: Period.

MR. NORWOOD: Yes.

THE COURT: Now, we have certain other matters, too, and, of course, I will rule on all of these. The next is the objection to the four points.

Now, the Court understands that the defendant is a [11] passenger in a car driven by Ms. Marlowe, his girlfriend. Earlier there had been some trouble with Cortez Neal. I think I was informed he's died recently or committed suicide.

MR. NORWOOD: Yes, Your Honor, he committed suicide.

THE COURT: The late Mr. Neal, who is the brother of the mother of the defendant's two children. Do I have that right?

MR. KAVANAUGH: Yes, Your Honor.

THE COURT: And Shawnda, if I'm pronouncing that right.

MR. KAVANAUGH: Shawnda.

THE COURT: Shawnda. But at any rate there had been some problems, not surprisingly, and Mr. Neal had taken the side of his sister. Full-side ram. On the particular date we are concerned about, this defendant returns with a pistol. The pistol's loaded. That's enough to make him a felon in possession there. It does, as a matter of fact. Some words are exchanged with Cortez, and the defendant pulls out the weapon and fires it.

Then there is a chase. The police become aware of the chase. Marlowe drives the car that the defendant's in past the police car. The police car takes after it. And the defendant then ditches the firearm. The chase continues and the defendant's apprehended.

[12] Now, as I understand it, the theory in this case is that firing that firearm in a residential area is a felony under state law. Is that your theory?

MR. NORWOOD: Yes, Your Honor.

THE COURT: Mr. Norwood. And that being the case, he gets four points for that. And then on top of that, he gets another two points, not for obstruction of justice, but for reckless endangerment of a police officer. And I think the theory is there whenever there's a high speed chase particularly, well, that's reckless endangerment in this case.

So that's where we are. What do you want to put on in that regard, Mr. Kavanaugh?

MR. KAVANAUGH: I would like to call my client to the stand.

THE COURT: All right. The clerk will administer the oath to the defendant.

DEONDERY CHAMBERS, having been duly sworn, testified as follows:

THE CLERK: Please be seated. For the record state your name. Spell your last name.

THE WITNESS: Deondery C-H-A-M-B-E-R-S, Chambers.

DIRECT EXAMINATION

By MR. KAVANAUGH:

Q. Mr. Chambers, you don't deny that you possessed that [13] firearm on the day in question and shot it?

A. No, sir.

Q. Where did you point the barrel of the gun when you shot it?

A. In the air.

Q. Can you demonstrate for the Court exactly what you did?

A. I just shot up.

Q. Now, prior to this event, how would you describe your relationship with Cortez Neal?

A. Just bad.

Q. Bad?

A. Yes.

Q. Had he ever threatened you before?

A. Yes.

Q. How many times?

A. Probably like three times.

Q. And had you had problems the day before with Shawnda?

A. Yes.

Q. Briefly describe those for the Court.

A. I was at one of those parents' house, and we had been in her room, and there was a car pulled up in the driveway, and we didn't know who it was. And she went to the door. Ashley went to the door, and it was Shawnda at the door.

Q. What happened next?

A. She asked to open up the door and walked right in.

[14] Q. Did Shawnda engage you in a conversation, either you or Ashley?

A. Yes, me and her were arguing in the house. I told her, I just told her I was coming out of the house. It was Ashley's parents' house. Of course, they was asleep and I didn't want to cause no problems. I told her I wanted to leave the house. I was coming out of the house.

Q. Did anybody invite her in?

A. No.

Q. Was she welcome there?

A. No.

Q. This is Ashley's father's house, right?

A. Yes.

Q. This was in Mt. Vernon?

A. Yes.

Q. The next day you go back over to where Shawnda lives. That's at Conger and Sixth; is that right?

A. Yes.

Q. What did Cortez do towards you, and what did you see him do towards Ashley Marlowe, who is your girlfriend at the time?

A. At which time?

Q. Just begin from the first time you encountered Cortez that day.

A. I had come out of the house from changing clothes, and my [15] uncle told me to come outside because Cortez was out there chasing Ashley Marlowe around the car. So I come outside. And when I come outside, I get between both of them, and I ask Cortez what's going on. And he tell me that Ashley was disrespecting my kid, my son, my oldest son. So I asked my son — his name Deon, too — and I asked my son did Ashley say anything to him? He said, "No."

And I asked Ashley I was like, "Did you say anything to my son?" And she said, "No." I asked Cortez. I'm like, "Why are you, you know, just trying to start something?" Then I thought about it. It was just that he was trying to, he got in between me and Shawnda conflict from last night. That's what it was. "That's the reason he came looking for you."

Q. He was trying to pick a fight?

A. He was trying to pick a fight with me.

Q. Before Mr. Neal passed away, how big a man was he during this time?

A. Six-one.

Q. How much did he weigh?

A. About 200.

Q. Do you know his reputation in your community for his temperament for being a violent or a passive person?

A. He just act crazy.

Q. Okay. And I think — I believe he shot himself and [16] killed him earlier this year?

A. Yes, sir.

Q. Had you ever known him to carry a gun before?

A. Not to this point.

Q. Okay. So he's trying to pick a fight with you and Ashley. What do you guys do?

A. I — he was trying to reach for her, and I moved him to the side. Like "Man," you know what I'm saying, "quit tripping." Then he reached in his pocket and grab some money out of the pocket, and he slammed it on the hood, on the back trunk of my car. Told me that he had his buy money. That he was going to pistol whip me, and he was going to break her neck, snap her neck or something, something like that.

So he told me that I have like five seconds to move my cars or I wouldn't move at all. I didn't have a license at the time, but Ashley, she was scared to drive it. She was scared to get in the passenger seat. Every time she got in the passenger seat, he tried to grab her.

So I told her to move to the passenger side. I got in the driver's side and I drove off. And when I stopped like a block, I got out of the driver's side, and I told her to go in the driver's because I didn't want to get pulled over for driving.

Q. At some point in time you come back to this area of Lamar and Conger?

[17] A. Yes.

Q. And did you come back with a gun?

A. Yes, sir.

Q. When you got back to that area, what was the time frame? How long was it between the time you left after this fight and coming back with the gun?

A. Fifteen, 10 minutes — 10, 15 minutes.

Q. Okay. And when you come back, what happened?

A. I come back because I wanted to find Shawnda, to talk to Shawnda about why was her brother getting into an incident. And when I seen her, I seen her coming one way, and I was coming the other way so I was going to get behind her, but Cortez was in

back of her car. So when I pulled in back, pulled in back of Cortez.

So I told Ashley to go around so I could stop Shawnda. And at that time Shawnda had stopped and I had stopped, and I got out of the car, and Cortez was coming up toward me, so that's when I pulled out the gun.

Q. When you say coming up toward you, did he get in the car or get out of —

A. He was in the car at the time.

Q. And he got out of the car?

A. He start driving up towards me, and I didn't know if he had a gun or not. He just threatened me with it. You know what I'm saying. Said he was going to go get a gun.

[18] Q. And that's when you pulled the gun out and shot it in the air?

A. Yes.

Q. What happened next?

A. And then Shawnda got out of her car — Shawnda got out of her truck, and she started hollering, so I got back in the car. And Ashley — we drove off. When we drove off we come around the corner. Cortez started following behind me, and he started bumping — ramming into my car.

Q. Was he alone or with somebody else?

A. With a guy named Scoot.

Q. Whose car was he driving, his or Scoot's car?

A. Scoot's car.

Q. Okay. About how many times — Cortez was driving Scoot's car?

A. Yes.

Q. How many times did he ram Scoot's car?

A. When he got in the car and came around the corner, he rammed me the first time. It was a stop sign. He pushed me past the stop sign, and then we

tried to stop, but he rammed us again. By the time we got to Perkins, he rammed me again. He rammed me about six, seven times — six times.

Q. Did he ever knock you and Ashley off the road?

A. Yes.

Q. Where was that?

[19] A. At this gravel road. I can't remember. I think Liberty, it is. Liberty Road he knocked us. She got control back of the car and we kept going. Then we was going over the railroad tracks. He knocked us around the railroad tracks. That's when we come in contact with the police.

Q. What happened when you came into contact with the police car?

A. She went around us. Ashley, she went around the police car.

Q. And how long after that did you ditch the gun?

A. Probably about five, no less than about ten minutes into the chase.

Q. Okay. Now when you crossed the train tracks and you got rammed, was Cortez right behind you at that point?

A. Yes, at that point, he was.

Q. And you turned and that's when you encountered the police car; is that correct?

A. Yes.

Q. Where is Cortez and Scoot at this time?

A. When they rammed us over the tracks and we came to the police, I guess they must have backed up because they was still behind us at the time, but they must have come all the way around with us.

Q. At some point in time did you tell Ashley to pull over and calm down?

[20] A. Yes.

Q. About how long had you been going before that happened? How far — about how far had the police been chasing you all?

A. About five, six minutes.

Q. Okay. Were you, at this point in time, were you in town or were you out in the country?

A. We was out in the country.

Q. And once you pulled over, the police put you under arrest; is that right?

A. Yes, sir.

Q. Okay. And you see this statement that you signed the day you got arrested; is that correct?

A. Yes, sir.

Q. Is that pretty accurate? Is that pretty truthful?

A. Yes.

Q. Is there anything in there that you think is not accurate or truthful?

A. Its just the reason I told — I told — I said in my statement that I told her to keep going because I didn't want her to get in trouble. I mean that I didn't want her to get in trouble. I was going to take the blame for it, you know, so — but in her statement she already say that she had decided to keep going herself.

Q. Well, you were both scared?

A. Yes.

[21] Q. Okay. Now, one thing just to be clear. You've heard us talk about the escape charge?

A. Yes, sir.

Q. Was there any violent conduct by you involved in that?

MR. NORWOOD: Objection, Your Honor. This is a legal determination based on the documents, not on the actions or the facts underlying the case.

THE COURT: Well, at a minimum I will take it as an offer of proof so the record is complete.

Q. (by Mr. Kavanaugh) Tell the Judge what happened.

A. I was doing weekends in the county jail and I just — I didn't report for — I didn't report to do like three weekends and I went to court. I went to court one — after I missed three weekends and I had a warrant. I had a warrant for the week for not doing the weekends so they locked me up then. I went to court the next day. They reinstated my probation and gave me four more weekends added onto it and let me go home.

Q. And just briefly, Deondery, to make sure everything is clear, tell the Judge about your jaw, about your reconstructive surgery.

A. Like in, I think it was '94, I got — I was shot. I got shot. I was shot twice. I was shot two times. Both times I was an innocent bystander. I was in the wrong place at the time. The first time I got shot I was shot in the face. I [22] was in my house and some people shooting outside. And I'm from St. Louis. So people shooting outside of the house, and a bullet came through the next door neighbor's house. Came through their door, through their wall, came through my wall, came in my face and out through the wall.

Q. How many surgeries have you had?

A. Three.

Q. And what have you got in your face now?

A. I've got a metal plate from here to here.

MR. KAVANAUGH: Okay. Your Honor, would the record reflect he's talking about the entire left — right side of his jaw?

THE WITNESS: Here to here.

THE COURT: He's pointed out with his fingers where the plate is.

MR. KAVANAUGH: Okay. That's all the questions I have.

THE COURT: Any cross examination?

CROSS EXAMINATION

BY MR. NORWOOD:

Q. Mr. Chambers, so we don't have to go through every prior conviction, you've been convicted a number of times in the past?

A. Yes.

Q. Are the convictions in your presentence report accurate?

[23] A. Yes, sir.

Q. And I'm handing you what's been marked as Government Exhibit 1, and that's a copy of the written statement that you signed, correct?

A. Yes, sir.

Q. And to be fair you didn't write that out. The officer wrote it out?

A. Yes, sir.

Q. And you read it before you initialed it and signed it?

A. Yes, sir.

Q. And you told the officer the truth, right?

A. Yes.

Q. You didn't lie to him, did you?

A. I lied to him when I told him that I, that I told Ashley to keep driving the car.

Q. Well, you told the officer that several times, didn't you?

A. No, I only told him that one time.

Q. One time?

A. Yes.

Q. Okay. But you did lie to him then?

A. Yes.

Q. You're admitting that?

A. Yes, I did.

Q. Okay. Now let's talk a little bit about this incident [24] with Cortez Neal. Am I correct you said you didn't know that prior to that time, you never knew him to carry a gun; is that right?

A. Not at the time.

Q. Okay. So you had, and we are talking about the day in question that the incident occurred on and the chase occurred on, on that date you already had a gun somewhere, right?

A. I went and got a gun.

Q. Where did you get it from?

A. From my house.

Q. From your house. How long had you had the gun?

A. For a while.

Q. Well, are we talking a week, a month, a year? How long did you have the gun?

A. About a month.

Q. Okay. Was the gun loaded?

A. No, not at the time. I loaded the gun.

Q. Okay. So after the initial altercation with Cortez Neal, you and Ashley Marlowe left?

A. Yes.

Q. This is after he threatened, threatened to pistol whip you and snap your neck?

A. Yes.

Q. You all left the area, you and Ashley, correct?

A. Yes.

[25] Q. You weren't near Cortez Neal?

A. Yes, sir.

Q. You could have driven to the police department, couldn't you?

A. Yes.

Q. So you could have reported a crime, couldn't you?

A. Yes.

Q. You could have gone to the police and said, "This guy threatened to break my neck." Right?

A. Yes, sir.

Q. You didn't do that?

A. No, sir.

Q. You went to your house?

A. Yes, sir.

Q. You went and got a gun?

A. Yes, sir.

Q. You went and loaded a gun?

A. Yes, sir.

Q. And then you went back to where Cortez Neal was?

A. I didn't go back to where he was. The way to my kids' mother's house is the same route, around where all this happened at, so I was going to my kids' mother house to talk to her, but at the same time I ran — I seen her coming. I was coming to her house. She was coming towards my way. I was going to go catch up with her, but I didn't see Cortez [26] car because he was driving behind her in the car that he was in.

Q. So you went home and loaded the gun and drove back to talk to the mother of your babies?

A. I wasn't — it wasn't like I was going to have the gun out for her. I was going to ask her what was her brother because our family never gets in our problems. This is the first time this ever happened.

Q. So your intent was to go and talk to the mother of your children?

A. Yes, sir.

Q. And you went and got a loaded gun before you did that?

A. Yes, sir,

Q. And you went to — do you have a phone?

A. Huh?

Q. Did you or Ashley have a phone at that time?

A. Yes, sir.

Q. Did the mother of your children have a telephone where you could call her?

A. Yes, sir. No. Not at the time, no.

Q. So there's no way you could have called her on the phone?

A. No, she just got a phone since I've been locked up.

Q. So you went back to talk to her?

A. Yes.

Q. Where does she live in relation to Cortez Neal?

[27] A. Cortez at the time, he wasn't even living in Mt. Vernon. He was living in Carbondale. Shawnda stays in Mt. Vernon.

Q. Okay.

A. So he was just down there for some reason. I don't know.

Q. But according to your testimony, you came back 10 to 15 minutes after you left, right?

A. Yes.

Q. So when you left Cortez Neal was there, right? When you left the area —

A. When I left the area.

Q. — Cortez Neal was still there?

A. Yes, in front of the person house that I was changing clothes at. I wasn't changing clothes at Shawnda's house.

Q. Okay. Why did you go and get the gun for if you were going back to talk to the mother? Your intent is to go back to talk to the mother of your

children, and you go and get a loaded gun — and go get a gun and load it and take it back to talk to the mother of your children. Why did you do that?

A. Because I didn't — because I was just threatened by Cortez, and I didn't know if I was going to run back to him or not so I was just protecting myself in case he, you know —

Q. You knew it's illegal for you to have a gun, right?

A. Yes, sir.

Q. Why didn't you go to the police?

[28] A. That was a mistake I made.

Q. But why didn't you? I'm wondering.

A. I didn't. I just — I wasn't thinking.

Q. Okay. So you had the opportunity to go to the police, but you chose not to?

A. Yes.

Q. Now, you indicated that — now, where did these shots take place? How many shots were there?

A. One.

Q. Where did they take place at?

A. Lamar side, on the Lamar side of the —

Q. Housing projects?

A. Yes.

Q. Where people live?

A. Yes, sir.

Q. It's a residential area?

A. Yes, sir.

Q. Okay. And your testimony is you shot the gun straight up in the air?

A. Yes, sir.

Q. Okay. If you were scared for your life from Cortez Neal, why did you shoot it straight up in the air?

A. Because I wasn't trying to harm him. I just wanted him to back up off of us so we could just go.

Because at the time I couldn't talk to Shawnda. I couldn't talk to Shawnda [29] because he was there.

Q. If you had a dispute with Cortez Neal, why didn't you go and just take care of it man-to-man in the old-fashioned way and fight him?

A. Because I been shot in the face. If I get hit in the face, I could be hurt real bad.

Q. So you don't fight anymore?

A. If it really comes down to it, I have to, yes.

Q. You've fought before?

A. I try to avoid it. I try to avoid any altercation if I can. If I don't have any choice, then, I guess I have to fight, I guess.

Q. When you were in IDOC, you were in segregation because of your fighting, correct?

A. Yes.

Q. Okay. So when push comes to shove, you can fight. You don't need a gun, do you?

A. No, sir. At the same time it wasn't — when I was in IDOC, I wasn't in an altercation with a person as big as Cortez.

Q. Oh, so if the person is the same size as you or smaller, you can fight them, but if they are bigger than you, you got to get a gun?

A. No. No. No.

Q. Okay. You indicated that Cortez Neal was ramming your [30] car?

A. Yes, sir.

Q. How many times did he ram it?

A. Six or seven times.

Q. Where did he ram your car?

A. Coming around — right when you come around.

Q. I mean not where geographically. Where on the car did he hit you?

A. In the back,

Q. How many times?

A. Like six or seven times.

Q. Always in the back?

A. Always in the back.

Q. Was it with a lot of force?

A. Yes, because we stopped — we try to stop him when he bump me the first time. We try to stop. He pushed me past the stop sign right in the intersection. If any cars would have came, we probably would have got hit. He pushed me right in the middle of the street.

Q. So he pushed you so hard he pushed your car in the middle of the street?

A. Yes, sir.

Q. So there must have been a lot of damage to your car. If he pushed your car so hard it went into the intersection, would there be damage to your car, do you think?

[31] A. There should have been. I don't think any damage was done to it.

Q. Okay. Now you're fleeing and Ashley's driving, and you're in the passenger's seat, right?

A. Yes.

Q. And you're telling her to stop?

A. Not at the moment, not at the time.

Q. Then you come upon a police car in the street, correct?

A. Yes.

Q. And the police car has its lights on and sirens going, right?

A. Yes.

Q. And Cortez Neal isn't behind you at this point, correct?

A. We thought he was still behind us, but he must have had it turned around somewhere once he pushed us across the track because once we came

over the tracks, when you come across the tracks, you make a left. And as soon as you make that left, that's when we ran into the police at. We thought — we thought he was still behind us, but evidently, he wasn't because the police didn't go after them.

Q. You just made a left turn when you come around?

A. When we came around, yes.

Q. So you're going slow when you made a turn?

A. After we came around over the tracks, he pushed us.

Q. Okay.

[32] A. So we kind of, you know —

Q. But you saw the police car, right?

A. Yes.

Q. And if this person is threatening you like you say, you could have stopped right there where the police officer was, correct?

A. Yes, but we was scared. She was scared, too. Ashley was scared, too.

Q. But the police officer is right there in the middle of the street, right?

A. Yes.

Q. You could have stopped?

A. Yes.

Q. You could have told the police officer "These guys are chasing me," right?

A. Uh hum.

Q. But you still had the gun, didn't you?

A. Yes.

Q. So you couldn't stop, right?

A. Yes.

Q. Because you had the gun?

A. Yes.

Q. And you didn't want to be arrested for being a felon in possession?

A. Yes.

[33] Q. That's the reason you told her to keep going, correct?

A. Excuse me?

Q. That's the reason you told Ashley to keep going?

A. Yes. Yes.

MR. KAVANAUGH: Nothing further.

MR. NORWOOD: One question.

REDIRECT EXAMINATION

BY MR. KAVANAUGH:

Q. The night before this happened when Shawnda went into Ashley's parents' house and created a disturbance, did you go to the police?

A. Yes.

Q. What did they do?

A. Nothing. Asked some questions about me that don't even concern the incident.

Q. So you went to the police the night before?

A. Yes.

Q. You asked for their help?

A. Yes.

Q. They didn't do anything?

A. They was just ready to lock me up because I kept complaining about it. No, they was ready to lock me up. Told me to leave. They was going to handle it, but they wasn't doing nothing about it.

MR. NORWOOD: Okay. That's all the questions I [34] have. Your Honor, I forgot to move to admit Government Exhibit 1 for the record.

MR. KAVANAUGH: It's already in in my submission. I put in his statement, Ashley Marlowe's statement, and a statement by two by-standers.

THE COURT: I have his statement. It will be made as part of the record.

MR. KAVANAUGH: I will make an offer of proof. We have Mr. Ronald Jackson who saw the altercation on Conger Street, and he would testify consistent with what Mr. Chambers has already testified to about the fight and the threats and everything like that. I'll just, if you want to hear from him, I can put him on.

THE COURT: Does the government accept the proffer?

MR. NORWOOD: I'm trying to find out a little bit more information about this individual.

MR. KAVANAUGH: Lionel Jackson. He has a felony conviction. He's been to the Illinois Department of Corrections. I will put that on the record, also.

THE COURT: All right, I want to see if the government will accept the proffer.

MR. NORWOOD: That's fine, Your Honor.

THE COURT: All right. I'll take the proffer.

MR. KAVANAUGH: We have one final witness.

THE COURT: All right. Call your next witness.

[35] *BRENDA TRIPP*,

having been duly sworn, testified as follows:

THE CLERK; Please be seated. For the record state your name and spell your last name.

THE WITNESS: My name is Brenda Tripp, T-R-I-P-P.

DIRECT EXAMINATION

BY MR. KAVANAUGH:

Q. Where do you work?

A. I work at the office of the Federal Public Defender for the Southern District of Illinois.

Q. What do you do?

A. I'm an investigator.

Q. And did you do some work for me in relation to this Chambers matter?

A. Yes, sir, I did.

Q. Specifically, did you track down Mr. Chambers' car?

A. I did.

Q. Where did you find it?

A. I found it from in the front yard of Shawnda Neal's residence in Mt. Vernon.

Q. Did you take a look at the car?

A. Yes, sir, I did.

Q. Did you see any evidence of damage to the rear or the rear quarter panels?

A. No, sir, I didn't.

[36] Q. Did you see any — whether or not it was caved in or there was any paint or scratches to the rear or rear quarter panels?

A. Not that I recall.

MR. KAVANAUGH: That's all the questions I have.

THE COURT: Cross examination?

MR. NORWOOD: No, Your Honor.

THE COURT: You may step down.

MR. NORWOOD: One question.

CROSS EXAMINATION

BY MR. NORWOOD:

Q. When did you go see the car?
A. I was there Monday, May 8th.

MR. NORWOOD: Okay. Nothing further.

THE COURT: You may step down, Ms. Tripp. Good to see you.

THE WITNESS: You, too, sir.

MR. KAVANAUGH: Your Honor, that's all we have.

THE COURT: Very well. All right. The government's put the matter at issue. I've heard evidence including cross examination. I'll have a very brief argument on the issue of the objections.

MR. NORWOOD: Your Honor, the government has some evidence.

THE COURT: You have some evidence you wish to put [37] on? Pardon me. That never occurred to me.

MR. NORWOOD: First, the government will call Kevin Jackson.

THE COURT: All right. *KEVIN JACKSON*,

having been duly sworn, testified as follows:

THE CLERK: Please be seated. For the record state your name and spell your last name.

THE WITNESS: Kevin Jackson, J-A-C-K-S-O-N.

DIRECT EXAMINATION

BY MR. NORWOOD:

Q. And who do you work for, officer Jackson?
A. The Mt. Vernon Police Department.

Q. And how long have you worked for them?

A. Approximately two and a half years.

Q. I want to direct your attention — one second, Your Honor. I want to direct your attention to May 31st, 2005, at approximately 8:10 p.m. Were you working that night?

A. Yes, sir.

Q. Or that evening?

A. Yes, sir.

Q. Okay. And were you involved in a car chase?

A. Yes, sir.

Q. And does your car have a dashboard camera on it?

A. Yes, it does.

[38] Q. And did your camera there have a videotape of that chase?

A. Yes, it did.

Q. And I'll hand you what's been marked as Government Exhibit 2

MR. KAVANAUGH: I'll stipulate to the foundation.

MR. NORWOOD: And the government would move to admit Government Exhibit 2.

THE COURT: Moved by stipulation.

Q. (by Mr. Norwood) And you gave this to me this morning?

A. That's correct.

Q. I can play the tape.

(Playing the videotape.)

Q. (by Mr. Kavanaugh) Can you describe sort of what's happening? When the tape starts what's the scene so the Court knows how to follow it?

A. I was dispatched to the area of Sixth and Lamar for shots fired. While responding there I seen

the suspect's vehicle at the edge of town. I blocked off one road, and that's whenever the vehicle passed me, and then it continues from there.

Q. So when the tape starts it's when the vehicle is passing around you?

A. Yes.

Q. And you follow to chase it?

A. That's correct.

[39] Q. What speeds do you reach?

A. Speeds up to 80 miles per hour.

Q. Okay. Now this isn't part of the incident we are talking about today, is it?

A. No, it's actually —

Q. Now this isn't part of it either?

A. No, sir, it's not. It's just after this one.

Q. Just after this?

A. Yes. This is it.

THE COURT: There we go.

Q. (by Mr. Norwood) Now is this you turning around?

A. Yes, it is.

Q Now is this a residential area you are driving through?

A. Yes, sir, it is.

Q. And is that the car up in front of you that you're chasing?

A. Yes, sir, it is.

Q. Did you have to swerve to miss a dog?

A. Yes, I did,

Q. For the record that's traffic coming the other way, a vehicle coming the other way?

A. That's correct.

Q. Are your lights going at this point?

A. Lights and sirens.

Q. Okay. When you were first in the intersection, were your [40] lights and sirens on?

A. Yes, sir.

Q. And is that the defendant?

A. Yes, sir, it is.

Q. Getting out of the passenger's side?

A. Yes.

Q. Is that Ashley Marlowe getting out of the driver's side?

A. Yes, sir, it is.

Q. And what's the defendant saying to you at this time? Do you recall what he was saying to you?

A. I believe he was concerned about my pistol being pointed at him. Requesting I stop.

Q. And did you take him into custody after this?

A. Yes, we did.

MR. NORWOOD: Unless defense counsel wants to see more.

MR. KAVANAUGH: No.

Q. (by Mr. Norwood) And did you arrest both the defendant and Ashley Marlowe?

A. Yes.

Q. Were they both arrested?

A. They were both arrested and incarcerated.

MR. NORWOOD: Nothing further.

THE COURT: Cross examination.

MR. KAVANAUGH: Your Honor, we have never seen that [41] tape till right now. Could I have just a second to talk to my client?

THE COURT: Yes.

MR. KAVANAUGH: I don't have any questions.

THE COURT: All right. You may step down, Mr. Jackson.

MR. NORWOOD: And, Your Honor, one brief witness. I'm not sure it would be necessary. Detective Reickert. These are pictures of the vehicle. If you'll stipulate — I mean I can do an offer of proof. That was the vehicle immediately after.

MR. KAVANAUGH: At the impound.

MR. NORWOOD: Yes.

MR. KAVANAUGH: Yes. We stipulate.

THE COURT: The parties have stipulated that the photos being offered now are true and accurate depictions of the automobile as driven by the defendant as the automobile existed immediately after the chase and is impounded.

MR. KAVANAUGH: These are of the car driven by Ashley Marlowe.

THE COURT: Did I say driven by the defendant?

MR: NORWOOD: Yes.

THE COURT: The defendant was driven by the passenger. Anything else?

MR. NORWOOD: No.

[42] MR. KAVANAUGH: The issues in mitigation are somewhat defined by portions of the advisory guidelines, particularly, K2.10, which is the victim's conduct policy statement, and K2.12, which talks about duress. And specifically states that even though a duress justification might not constitute a complete defense to the crime charged, the Court can consider the duress issues in applying the guidelines

at both in determining the appropriateness of any enhancements as well as the advisory range.

It's our contention, your Honor, that shooting the firearm into the air was occasioned in pertinent part by the conduct of Cortez Neal who, by my count, if you just look at the statements of the parties, committed a number of felonies at the same time my client committed a crime for which he's already pled guilty. I would also call the Court's attention to the fact that admittedly there was a high speed pursuit, but the pursuit did not begin until after the car driven by Marlowe with my client with him was out in a more rural area. And that attenuates the risk of serious bodily injury to any person.

And as you can see, Ashley Marlowe drove the car, although fast, in a safe and appropriate manner. There was no suggestion in that tape that anybody came close to being hurt or put in actual risk of serious harm. So I would ask the Court to consider that.

[43] The law on the issue of reckless discharge of a firearm in the state of Illinois talks in terms of a mental state of recklessness which is in deference to what might happen by discharging a firearm. And in this case, Your Honor, the defendant argues that the conduct in question, the mental state was to avoid violence, was to avoid an altercation, and he did not intend to hurt anybody.

And, in fact, as the exhibits provided by the defense show, that although on one side of the street there was a residential neighborhood, on the other side of the street there was an open field. I don't know of any evidence that any person was actually put at risk by shooting this weapon in the air.

THE COURT: Thank you. I understand your argument.

MR. NORWOOD: Your Honor, the — with respect to the reckless discharge, I believe the Illinois Supreme Court case speaks for itself. Shooting a firearm in a residential area, which we have here, constitutes reckless discharge of a firearm, which is a Class 4 felony.

With respect to the reckless endangerment during flight, Your Honor has seen the videotape of the chase. It may have started in a residential area. It may have ended in a rural area. But even in that rural road, the officer had to swerve to miss an animal, and there was at least one oncoming car into the direction of the chase.

[44] To say she drove safely at speeds of 80 miles an hour during a chase is sort of an oxymoron. She recklessly endangered everybody, but did so in a safe manner. The government believes the video speaks for itself.

With respect to the issue of duress, two things. One, its not applicable under the law. The Seventh Circuit, and this is *United States versus Perez*, 86 F.3d 735, Judge Posner says, basically, about a felon in possession possessing a firearm for a defense. If ex-felons who feel endangered can carry guns, felon-in-possession laws will be dead letters. Upon release from prison most felons return to their accustomed haunts. Even those who go straight will in all likelihood continue to live in dangerous neighborhoods and consort with dangerous people. Every drug dealer has a well-written — he's not a drug dealer, I understand, but if we say ex-felons who possess a

firearm if you feel endangered, the law will be non-existent.

And finally, the elements for an offense version, one of the elements, no reasonable opportunity to avoid the threat of harm. This defendant left the threatened harm, went and got a gun, went and loaded a gun, returned to the threatened harm, and he bolted with the gun, fired the gun in the air in a residential area. There's no defense of duress or any mitigation of duress or anything like that.

MR. KAVANAUGH: Your Honor, I just want to be [45] clear. I'm relying on the guideline commentary and not the offense of duress. I realize that's not applicable here.

THE COURT: The Court has heard the evidence, covering all the papers including the briefs, and I note the following: First, the *Bryant* case by Judge Kanne is still the law in the Seventh Circuit. There Judge Kanne explicitly rejected an argument that is, in all respects, the same as the argument made here, the holding of that case being so explicit this Court would not rule inconsistently with that decision unless it were explicitly clear that it had been overruled and it has not.

The reason stated in that opinion, the Seventh Circuit simply, and for reasons of simplicity, categorically holds that escape is escape. And we're not going to get into the nuances of it for purposes of the sentencing statute. It counts. So we have here what is a career offender under the statute.

Now the other matters are going to be ruled on, too, so the record is clear.

Now, with regard to the four points, the Court will overrule the defendant's objection and will adopt the probation officer's recommended findings of fact there, and for this reason set aside for the moment the fact that the defendant was a felon in possession. And I use those words [46] advisory for the moment because what Judge Posner said in the case cited absolutely has to be the case. It's very dangerous to live in some quarters when you can't arm yourself, but that's an argument for not getting in trouble in the first place.

Set that aside for the moment. The standard is recklessness under the statute, not intent. I don't think the defendant intended to either kill or harm Cortez. I think that he wanted to frighten him. It didn't work as we now know, but to fire a weapon in no particular area, in a residential area, is reckless. What goes up, must come down. And where it comes down, nobody knows.

And it could be anybody that happened to have the misfortune of being in the residential area at the time. That's recklessness. It's not attempted homicide. It's not a lot of other things, but it is reckless and that's a felony. He recklessly discharged the firearm, so that counts.

Now, two, or the next point. Insofar as the two points that the probation officer assigned for the reckless endangerment, the probation officer was exactly right on that. Now, I understand that, first of all, that the defendant was not driving the vehicle, but still he was the prime mover.

There was a chase in the first instance because of [47] the actions of the defendant. The second thing is the defendant told us initially before he had time to

think about it that he told the officer that he instructed her to run and she did. That makes sense because he wanted to get rid of the firearm that he was carrying. He knew he was in serious trouble by this time. I might add on cross examination the last question the prosecutor asked, was that the reason you told her to run, and she said he said yes.

Now, there's more to it than that, though. Is there reckless endangerment whether he's driving or not? And the answer, yes, there is. It's true enough this is a rural road, but look, if Richard Petty were driving a car on the country road at 80 miles an hour, he's in risk and all of the rest of us are. He just is.

If you spent most of your life out in the country like at least two of us in this room, you understand full well the danger of driving fast on a country road. It's just dangerous. And I'm happy that the defendant and Ms. Marlowe were not injured in this situation. I'm particularly happy that the officer wasn't injured. And I'm particularly happy that grandma wasn't driving with a car full of kids from the other direction, and she wasn't injured either. But that's not the test. The test is whether there is reckless endangerment. Sure, there was. The defendant's objection is overruled.

[48] Again, I adopt all of the probation officer's recommended findings of facts and conclusions. And as I get it we have a career offender who, with a Criminal History Category of VI, who gets three points knocked off because of his cooperation, and he's down to a 31.

Now, what is your recommendation on this case, Mr. Norwood?

MR. NORWOOD: Your Honor, I don't mean to correct the Court at all.

THE COURT: Well, if I need correcting, please do it. I'd rather get corrected here than up the road.

MR. NORWOOD: You're referring to the defendant as a career offender, armed career —

THE COURT: Armed career — is it criminal or offender?

MR. NORWOOD: It's armed career criminal, ACC.

THE COURT: All right.

MR. NORWOOD: I didn't want there to be —

THE COURT: I appreciate that if my nomenclature is not correct. Did I calculate that right?

MR. NORWOOD: No, I think your calculations are correct.

THE COURT: Good. Good.

MR. NORWOOD: The sentencing range is 188 to 235 months. The government believes that a sentence in the [49] middle or higher end of the range is adequate in this case. You don't get to become an armed career criminal by happenstance. You have to actually work at it.

This defendant, beginning at age 18, had his first drug felony conviction as well as a DUI. What's troubling, very troubling is in 1998 the robbery conviction. This defendant testified, I believe the presentence report indicates, that he was shot twice when he was age 16, age 16 or 17 or 15, somewhere around there, shot in the jaw and shot in the chest. And he testified that he doesn't like to fight, especially individuals bigger than himself.

While the robbery took place, in paragraph 35 in the Presentence Investigation Report, took place after he had been shot when he and three other men beat and attacked a woman by the name of Brenda Anderson. She was beaten about the head and body with feet and fists.

Count 3, to which this defendant pleaded guilty to, was the offense of aggravated battery in that he knowingly caused harm to Brenda Anderson by kicking her in the body with his foot. So this defendant is, although he's been shot and it's unfortunate, he does not want to fight men, but to go with three other men and beat up a woman to take $75 is unconscionable. It's just unconscionable.

Nothing has caught this defendant's attention from age 18 forward. And the facts in this case — what really [50] happened is a function of human nature. Mr. Cortez Neal probably disrespected this defendant, and this defendant got mad, went and got a gun, went and loaded the gun and came back to confront Cortez Neal now that he had the gun. Now he was ready to fight. Even though he believed Cortez Neal never possessed a gun, this defendant got one loaded, and now he's ready to fight.

And the defendant says the shot went straight up in the air. I question how straight up into the air that shot went, but it was sufficient to scare Cortez Neal. The defendant talks about Cortez Neal ramming his car six times during the chase with enough force to push him through the intersection. The Court has the pictures of the car. There is not one iota of damage to that car.

This defendant has done nothing his entire life but break the law. This defendant — I tried to find

something. It's never been provided. He dropped out of school. You know, what are we to do?

I would advise the Court that this defendant did provide some information about a matter to me, and that's why I'm not reaching the entire top end, but the government would recommend a sentence at the middle of the range.

THE COURT: Mr. Kavanaugh, what is your recommendation?

MR. KAVANAUGH: Your Honor, I ask the Court to [51] consider the mitigating factors I've already put before the Court and the record. I would also advise the Court that Mr. Chambers did give a proffer that was accepted by the government that was considered complete, truthful, and successful. He also was forthright in dealing with the police.

He gave a statement. He admitted his culpability. He walked in. He pled guilty. He understood the thrust of arguments here today. I would suggest to the Court that he is not an awful human being as Mr. Norwood paints him, and I would suggest that the simple record of his incarceration from Jefferson County would indicate to that.

It appears neither the state's attorney of Jefferson County nor the presiding judges in the cases thought he was that horrible of an individual because he was not incarcerated for more than about a year and a half total based upon this entire criminal record. So I think Mr. Norwood paints an exaggerated picture of his criminality. That would be my recommendation.

I would also ask to supplement the record, bring over a copy of the criminal information on the escape conviction that is at issue. I've got it across the street.

I will bring it over. I'll mark it as Defendant's Exhibit 6. I will bring it over in about ten minutes right after lunch.

THE COURT: The Court will allow you to make that [52] part of the record, to bring that to the attention of my deputy clerk, Vicki McGuire.

All right. Mr. Chambers, this is your opportunity to speak if you would like. You are not required to. It will not be held against you if you do not, but the Court is always happy to hear from you. It's a valuable right. Is there anything you'd like to say? Mr. Chambers, then you may speak. Just speak into the mike so I can hear you.

THE DEFENDANT: Man, I accept the things I did, you know. I'm not denying. I'm not denying that I shouldn't have had the gun and none of that. I shouldn't have had it, you know.

THE COURT: All right.

THE DEFENDANT: Man, I got two kids I got to get home to.

THE COURT: Uh hum.

THE DEFENDANT: You know, I know I should have thought about that before I did what I did, but I'm not a violent person, you know. I've been in prison once, you know. I've been out three years. I haven't caught a felony in three years. Haven't been in trouble in three years. You know, this is the only thing I done in three years.

I know it's not that simple, but, you know, I got — man, I've got my kids now. I've got my little brother right there, you know. Only thing I don't think I deserve. [53] It's not like I'm a violent person that can't be fixed or something.

I've been on my own, man. I've been on my own since I was like 14, 15. I don't really got nobody. That's all I got right there.

THE COURT: All right. The Court's prepared to pronounce sentence. I've considered the defendant. Some of what he, said most of it, is true. The defendant grew up in St. Louis, Missouri. He certainly has not had much guidance and assistance since he came into this world, but here we are. And the conviction simply speaks for itself.

Now this Court, nor any other court, really is capable of looking into and ascertaining the soul of a man, and that's not to be under our jurisdiction, actually. That's a good thing, but we are and you should judge actions and try to put them into context.

And it is a shame. This defendant here has two children, and by nature's law the children need him like he needed somebody, but he will not be here to provide that. And all the concerns that are expressed here and heartfelt should have been considered at the time.

Now, look. Everyone here understands and this defendant did, too, that he was told, "You're a felon. You can't possess a firearm." And he did. And he compounded the problem by going for a firearm which he really didn't have [54] to. And then to make matters worse, he fired it. And here we are today. Now if my memory doesn't fail me, what are you, 26 years old, 27?

THE DEFENDANT: Twenty-six.

THE COURT: Twenty-six years old. And a better part of his life, the best part he's going to be locked up. Now, I think that this is a guideline sentence,

and while some courts would, and it can certainly be justified in imposing something at the high end, they would do it.

But here's my thinking on this subject. I'm going to give you a sentence at the very lowest end. And you will be committed for a term of 188 months. Here's my reasoning: That's a lot of time. And the statute itself provides that not sentence you to any more than is necessary.

Besides that, if you can't learn your lesson in 188 months, it wouldn't matter if I locked you up for 235 months because when you get out, you'll promptly, if you haven't learned your lesson, you will promptly violate your supervised release and just be picked up again and go back to prison, which is what generally happens in these cases.

So 188 months in the Bureau of Prisons to be followed by five years of supervised release. I'll talk about that a little bit more. You're going to have a special assessment of $100. There is no restitution involved in this case. There is a fine. Now the fine calls for something [55] between 15,000 to 150,000 with a statutory finding of $250,000. But there is no possible way on earth. Again, if my memory doesn't fail me, the lifetime reported earnings of this defendant are something like $20, so there's no reason to impose a fine that he could never even begin to pay or comprehend.

So I will do a downward departure, and it will be to $750. And that fine, as well as the special assessment, will be paid in an amount and in the manner specified by the financial responsibility officer in the particular prison he's incarcerated at, and they vary

from prison-to-prison. I don't know what it will be. So you have that.

Now, supervised release. I'm not going to go over every particular matter because it would be impossible for you to remember it, but you do need to know within 72 hours of being released, you must report in person to the nearest Probation Office in the district to which you are released.

And while on supervised release, you shall not commit another federal, state, or local crime. You will submit to drug testing. That will happen no more than 52 times a year. You shall not possess a firearm or other destructive device. You shall cooperate in the collection of DNA as directed by your probation officer.

While on supervised release, you will submit your person, your residence, your real property, your car, your [56] computer, and your vehicle to searches by probation officers whenever they determine and, as a matter of fact, it is reasonable to do so. You must inform your family members or friends or lovers who you're staying with or spouse that they, too, will be subject to this. That is to say, the probation officers will come back in and search even if it's their house. If this doesn't happen it will be revoked, that is, your supervised release will be revoked.

Now, just a few things that you need to know. If you request it, the clerk of my court will prepare and file for you today a notice of appeal. She will do that only if you request it. Do you want her to do that?

MR. KAVANAUGH: Your Honor, we probably will appeal, but we won't do it today. I will file the necessary paperwork next week.

THE COURT: Then in that case my clerk of court will not do that. I want that clear. In the event a notice of appeal is filed as anticipated, the clerk will then appoint a lawyer for purposes of the appeal at no expense to the defendant. And a record of this matter will be provided for purposes of the appeal at no expense to the defendant.

Mr. Norwood, is there, anything the Court has misstated or overlooked that you haven't already corrected me on?

MR. NORWOOD: No, Your Honor, the government would [57] make one request of the Court. The Exhibit No. 2, I believe, the videotape —

THE COURT: Yes.

MR. NORWOOD: — I received it this morning. It's the original and has not only the chase involving Ms. Marlowe —

THE COURT: Would you like to withdraw that and submit a copy?

MR. NORWOOD: And submit a copy of just that part of it. There are other matters on it that are just not relevant.

THE COURT: Granted, but don't be too tardy because Ms. McGuire is fast. She will have this record on appeal at no time as requested.

MR. NORWOOD: Thank you, Your Honor.

THE COURT: Is there anything I've overlooked?

MR. KAVANAUGH: The defendant objects to the rulings for the reasons stated. The defendant would like the Court to grant him a very short visit with the children before he is remanded to the custody of the Bureau of Prisons.

THE COURT: All right. I have no objection to that, but I will leave that to the sound discretion of the marshals. As you know we have a rule in my court they never try to advise me on sentencings, and I never advise them on [58] custody, but Rick, you use your judgment on that.

All right. There being nothing then further before the Court, the court stands in recess. The defendant is remanded to the custody of the marshals as they see fit under the circumstances.

(End of hearing.)

AO 187 (Rev. 7/87) Exhibit and Witness List

United States District Court

Southern DISTRICT OF Illinois

USA v. Deondery L. Chambers EXHIBIT AND WITNESS LIST

CASE NUMBER: 05-40044-001-JI

PRESIDING JUDGE	PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
G. Patrick Murphy	George Norwood	Phillip Rennaugh, AP
TRIAL DATE(S)	COURT REPORTER	COURTROOM DEPUTY
5-12-06 -	Jane McCarthy	Vicki McGuire

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
Wit:		5/12/06			Deondery Chambers
1		5/12/06	✓	✓	Chambers written statement
Wit:		5/12/06			Brenda Tripp
Wit:		5/12/06			Kevin Jackson
2		5/12/06	✓	✓	Stipulation Video Tape
3-9		5/12/06	✓	✓	Photos Driven by passenger Marlowe
	6	5/12/06	✓	✓	State Record 99-CF-47

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

DEFENDANT'S EXHIBIT

RECORD SHEET

Cts I II & III Escape

99-CF-47
Case No.

Nature of Case

THE PEOPLE OF THE STATE OF ILLINOIS
-vs-
DESMONT L CRAWFORD

Attorneys:
States Attorney

Verbinas

Fine all 9-6 Appr Prelim Dispos. Sentence Given

DATE			JUDGE AND REPORTER		COSTS
1	17	99		Information filed. Bond set at $	$ 40.00
2	17	99		Certificate of Service filed	5.00
				Notice of Hearing filed.	5.00
2	19	99		Certificate of Service filed with Notice of Hearing	
2	24	99	Hawley Kathy L.	Def w/ PD Verbinas. ASA Villani. Cts II & III Dismissed on motion of Ct I:	
				☑ Defendant is advised of: ☑ Nature of the charge(s); ☑ Possible penalties, including enhanced or extended terms; ☑ Right to plead not guilty or persist in said plea; ☑ Plea of guilty as a waiver of trial and of right to remain silent, cross-examine witnesses, and present defense. ☑ Inquiry is made as to threats or promises affecting the plea ☑ Plea is found to be voluntary and knowing ☑ Factual basis for plea is presented ☐ Defendant confirms conversing _____; defendant sentenced to 2a Mill. Mittimus (Reinstated) + costs. ☑ Judgment of guilty is entered. ☑ Ordered sex OFF.	
				Rev. hrg set 4-4-99 @ 9 am (Time Cert)	
6	30	99	Hawley County J.	PTR filed. Def w/ PD Verbinas. ASA Villani. Cause to APR 8	
				☑ Defendant is advised of: ☑ Nature of the charge(s); ☑ Possible penalties, including enhanced or extended terms; ☑ Right to plead not guilty or persist in said plea; ☑ Plea of guilty as a waiver of trial and of right to remain silent, cross-examine witnesses, and present defense. ☑ Inquiry is made as to threats or promises affecting the plea ☑ Plea is found to be voluntary and knowing ☑ Factual basis for plea is presented ☐ Defendant confirms conversing _____; defendant sentenced as set forth below: ☑ Judgment of guilty is entered. ☑ Ordered sex OFF.	
				5 yrs DOC (CONCURRENT) + balance of previously imposed fines/costs.	
				☑ Rev hrg 7/14/2000 @ 9 AM.	
7	6	99		Statement of Costs filed	
8	4	99		Motion to Withdraw Guilty Plea filed	
1	12	00	Hawley	Set 725 CF-157. 4-4-00 9:30 am	

ADDITIONAL RECORD SHEET

Case No. _____ No. _____

Nature of Case _____

DATE	JUDGE AND REPORTER		COSTS
12/6/04	Kt / Cyndy	Motion filed 8.4.99 stricken Term 8/20/05 PG	

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT
JEFFERSON COUNTY, STATE OF ILLINOIS

[Filed FEB 17, 1999]

No. 99-CF-47

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff

vs.

DEONDERY L. CHAMBERS
902 Wescott Street
Mt. Vernon, IL 62864
M/B 07/07/79
C516-1727-9193
Defendant

INFORMATION-COUNT I

The State's Attorney of said County charges:

That on the below listed dates in 1998, in said County, DEONDERY L. CHAMBERS committed the offense of ESCAPE in that said defendant, having been convicted of unlawful possession of a controlled substance, 98-CF-17, in violation of 720 ILCS 570/402(c), a felony, knowingly failed to report November 27, 1998, December 4, 1998, December 11, 1998 and December 18, 1998, to the Jefferson County Jail, a penal institution, in violation of 720 ILCS 5/31-6(a), a class 3 felony.

COUNT II

The State's Attorney of said County charges:

That on the below listed dates in 1998, in said County, DEONDERY L. CHAMBERS committed the offense of ESCAPE in that said defendant, having been convicted of robbery, 98-CF-109, in violation of 720 ILCS 5/18-1, a felony, knowingly failed to report November 27, 1998, December 4, 1998, December 11, 1998 and December 18, 1998, to the Jefferson County Jail, a penal institution, in violation of 720 ILCS 5/31-6(a), a class 3 felony.

COUNT III

The State's Attorney of said County charges:

That on the below listed dates in 1998, in said County, DEONDERY L. CHAMBERS committed the offense of ESCAPE in that said defendant, having been convicted of aggravated battery, 98-CF-109, in violation of 720 ILCS 5/12-4(b)(8), a felony, knowingly failed to report November 27, 1998, December 4, 1998, December 11, 1998 and December 18, 1998, to the Jefferson County Jail, a penal institution, in violation of 720 ILCS 5/31-6(a), a class 3 felony.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT
JEFFERSON COUNTY

[Filed FEB 24, 1999]

Case No. 99-CF-47

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

DEONDERY L. CHAMBERS
Defendant

PLEA OF GUILTY AND WAIVER OF JURY

ESCAPE COUNT I

I, THE UNDERSIGNED, Defendant in the above entitled cause, hereby enter a plea of guilty in manner and form as charged therein in the INFORMATION/COMPLAINT/INDICTMENT and each count thereof, filed in said cause. I HEREBY WAIVE A Trial by Jury and consent to an immediate hearing, and also consent that the Court fix my punishment under my plan herein. I am 19 years of age.

Done in open Court, at Mt. Vernon, Illinois, this 24th day of February A.D. 1999.

/s/ Deondery Chambers
Defendant

Street City State

Phone

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
JEFFERSON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
Deondury L. Chambers
Defendant.

No. 98CF17
98CF109
99CF47

☐ SENTENCING JUDGMENT
☒ JUDGMENT OF PROBATION
(After Revocation in 98CF17 & 98CF109)

☐ JUDGMENT OF CONDITIONAL DISCHARGE
☐ ORDER FOR SUPERVISION _____ PROBATION

Defendant has been found guilty of the offense of Unl. Poss. of A Controlled Substance (Class 4 felon Robbery (Class 2 felony), Agg. Battery (Class 3 felony) + Escape (Class 3 felony

X Defendant is represented by counsel, Bob Verhines
___ Counsel is waived intelligently, knowingly, and voluntarily.

The Court has considered the statutory factors required to impose sentence or disposition and

IT IS ORDERED that commencing on this date 2-24-99:

FILED
SECOND JUDICIAL COURT
FEB 24 1999
Gene Goforth
CLERK OF CIRCUIT COURT
JEFFERSON COUNTY ILLINOIS

☒ Judgment is entered and the Defendant is sentenced to
☐ Probation for a term of 30 months
☐ Conditional Discharge for a term of _____

☐ Without entering a judgment, Defendant is placed on:
☐ Court Supervision for a term of _____
☐ Section _____ Probation for a term of _____

IT IS THE FURTHER ORDER OF THE COURT THAT YOU SHALL COMPLY WITH THE TERMS AND CONDITIONS WHICH ARE MARKED [X] AS FOLLOWS:

☒ 1. You shall not violate any criminal statute or ordinance of any jurisdiction.

☒ 2. You shall report to or appear in person before the Probation Officer within 7 days and further as the Probation Officer shall direct.

☒ 3. You shall not possess a firearm or other dangerous weapon and shall surrender to the Clerk of the Court your Firearm Owners Identification card for the term of this Order.

☒ 4. You shall not leave the State of Illinois without the consent of the Court or, in circumstances in which the reason for the absence is of such emergency nature that prior consent by the Court is not possible, without prior notification and approval of your Probation Officer.

☒ 5. You shall permit the Probation Officer to visit at your home or elsewhere to the extent necessary to discharge the Officer's duties. You shall advise the Probation Officer as to your residence and employment and shall notify the Probation Officer within 2 days as to any change thereof.

☒ 6. You shall not have in your body the presence of any alcohol or illicit drug prohibited by the Cannabis Control Act (720 ILCS 550/1) or the Illinois Controlled Substance Act (720 ILCS 570/100) unless prescribed by licensed physician and shall submit to any random alcohol or drug testing ordered by the Probation Officer and pay cost thereof, and shall undergo any substance abuse counseling or treatment directed by the Probation Officer and pay any cost thereof.

☒ 7. You shall pay a fine of $ previously ordered fines + costs in 98CF17 98CF109 + Ct. costs only in 99CF47; a domestic violence fine/domestic battery fine/sexual assault fine/child pornography fine/street value fine of $_____; plus court costs, including arrestee medical fee, drug/DUI lab fee according to the following payment schedule: $_____ per _____ beginning _____ to be paid in full within _____. All payments shall be made to the Circuit Clerk.

☐ An Order of Withholding is entered pursuant to Illinois Revised Statutes, 730 ILCS 5/5-9-4.

☐ 8. You shall pay a drug assessment of $_____ according to the payment schedule set forth in Paragraph 7.

06/26/08 14:05 FAX 618 482 8057 FED PUBLIC DEFENDER ESL 006

70

☐ The drug assessment is converted to public service work (with 1 hour to be equivalent to $4) for a period of _____ under the terms and conditions listed in paragraph 11.

☐ The drug assessment collection is suspended until _____ during your participation in the _____ program or a substance abuse intervention or treatment program approved by the Probation Officer, and you shall pay all cost thereof. If you successfully complete said program, you may apply to court for a reduction in the drug assessment by amount of cost of said program.

☐ 9. You shall undergo a psychological assessment by _____ or a licensed facility approved by the Probation Officer and, if required by said facility or the Probation Officer, complete psychological evaluation, counseling, or treatment as an outpatient for the period of time required by said facility or the Probation Officer and shall pay all cost thereof.

☐ 10. You shall serve a term of home confinement at _____ or any location subsequently approved by the Probation Officer for a period of _____ beginning _____ from _____ until _____ each day. You shall remain within the interior of the place designated for your confinement during the hours designated and shall not leave your confinement except for the reasons set forth on the attached **"Conditions of Release from Home Confinement/Custodian's Home."**

☐ As part of this home confinement, you shall be placed on an approved monitoring device as provided by law with your consent and/or other person in residence with you and shall comply with the terms and conditions of an agreement with _____ and shall pay all cost thereof, according to the following schedule: Initial charge of $_____ within 7 days and _____ per _____ beginning _____ and continuing on the same day of each _____ thereafter until home confinement is terminated.

You shall admit the Probation Officer into your place of confinement at any time for the purpose of verifying your compliance with the conditions of your confinement.

☐ 11. You shall participate in and complete the requirements of the _____ program and shall report to said program as _____ or the Probation officer shall direct and pay all cost thereof.

☒ 12. You shall not contact, ~~be in the presence of, or go upon the premises of~~ Brenda Anderson, James Anthony, Debbie Farrells & Romanda Bootcheu

☐ 13. You shall obey the provisions of an Order of Protection entered in case number _____.

☐ 14. You shall become and remain gainfully employed by _____ or by an employer approved by the Probation Officer for at least _____ hours per week beginning _____ and shall present satisfactory evidence thereof to the Probation Officer.

☐ 15. You shall pursue and complete a course of study or vocational training at _____ or an institution approved by the Probation Officer beginning _____ and shall present satisfactory evidence thereof to the Probation Officer.

☐ 16. You shall support your dependents as required by law and, in addition, as required in case number _____ and shall present satisfactory evidence thereof to the Probation Officer;

☐ 17. You shall not operate any motor vehicle except in the course of your employment.

06/18/98 14:06 FAX 618 482 8057 FED PUBLIC DEFENDER ESL 007

☐ 18. You shall make restitution of $_____ to _____ according to the payment schedule set forth in Paragraph 7. A judgment for this amount is entered in favor of said victim. The Circuit Clerk shall enter this judgment in the judgment docket.

☐ 19. You shall make a contribution of $_____ to the local anti-crime program to be paid according to the payment schedule set forth in Paragraph 7.

☐ 20. You shall perform public service work under the direction and supervision of _____ or the Probation Officer for a period of _____. You shall abide by all the rules and responsibilities of the community service program of the Jefferson County Probation Department. You shall not be entitled to any compensation therefore and shall not be considered an employee for any purpose, including worker's compensation coverage;

☒ 21. You are sentenced to a term of 6 months in Jeff. Co. Jail as set forth in the Order attached hereto. No day for day credit to apply. This sentence shall be stayed so long as defendant is in compliance w/ all aspects of this ord

☐ 22. You shall submit to Genetic Marker Group (DNA) and HIV blood testing as set forth in the Order attached hereto.

☒ 23. You shall undergo an alcohol and drug assessment by TASC or a licensed agency approved by the Probation Officer and, if required by said agency or the Probation Officer, complete a remedial education course and/or an alcohol and drug evaluation, counseling, or treatment as an inpatient or outpatient for the period of time required by said agency or the Probation Officer. You shall report to said agency within 7 days and further as said agency or the Probation Officer shall direct and pay all costs thereof;

☒ 24. A Review Hearing is set for 4/14/99 at 9AM when you shall appear and the Court shall review the terms and conditions required to be met in this Order. If all terms and conditions are met, then you shall not be required to appear at the Review Hearing.

☒ 25. IT IS FURTHER ORDERED that you shall be subject to the Administrative Sanctions Program established by the Chief Judge of the Second Judicial Circuit. The Probation Department may invoke any sanction of this Program for violation of the terms and conditions of this Order.

☒ 26. IT IS FURTHER ORDERED that, upon motion of the State's Attorney, the Court allows the State's Attorney a per diem fee of $25.00 for each of 1 days actually employed in the trial of this cause.

☒ 27. IT IS FURTHER ORDERED that, having considered your ability to pay, a probation fee of $25.00 _____ for each month of actively supervised public service work, probation, conditional discharge, or supervision is imposed upon you as costs.

☐ 28. IT IS FURTHER ORDERED that at the conclusion of the term of supervision/Section ____ probation, if the Court determines that you have successfully complied with all of the terms and conditions of this Order, the Court shall enter a judgment dismissing this cause.

☐ 29. _____

_____

_____

Date: 2-24-99 JUDGE Terry H. Tamber

I hereby certify that I have been given a copy of this order, that I have read it, that I understand it, and that I promise to comply with its terms and conditions. That I further understand that failure to comply with the terms and conditions of this Order may result in revocation of my probation/supervision.

Date: _____ _____
Defendant

02/25/98 14:06 FAX 618 482 9057 FED PUBLIC DEFENDER ESL 008

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
JEFFERSON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff)
)
vs.)
)
Deandre L. Chambers)
Defendant)

No. 98CF17
98CF109
99CF47

FILED
SECOND JUDICIAL COURT
JUN 30 1999
CLERK OF THE CIRCUIT COURT
JEFFERSON COUNTY, ILLINOIS

✓ PETITION TO REVOKE PROBATION
PETITION TO REVOKE CONDITIONAL DISCHARGE
PETITION TO REVOKE COURT SUPERVISION

Now come the People of the State of Illinois, by Nicole L. Villani Assistant State's Attorney for Jefferson County Illinois, pursuant to Chapter 730, Illinois Compiled Statutes Section 5/5-6-4, and petition this Court to enter an order revoking the defendants ___ Probation ___ Conditional Discharge ___ Court Supervision and allocating jail credit, if any, and resentencing after a hearing on the Petition, and in support thereof state as follows:

1. That on or about the 24th day of February, 19 99, the defendant was placed on ___ Probation ___ Conditional Discharge ___ Court Supervision by this Court for a period of 30 months;
2. That in violation of said Order said defendant did:
___ willfully and contumaciously fail to pay fines, costs and/or restitution as ordered;
___ fail to appear before this Court for a review hearing as ordered on ___;
___ fail to report for imprisonment as ordered in that said defendant failed to report to the Franklin County jail on the ___ day of ___, 19 ___;
X fail to successfully complete drug and/or alcohol counseling as ordered; TASC
___ use or consume alcohol and/or controlled substance;
___ possess a firearm or other dangerous weapon;
___ leave the state of Illinois without consent of the Court or approval of the Probation Officer;
___ fail to perform public service work as ordered;
___ fail to report to said defendant's Probation Officer during the month(s) of ___;

WHEREFORE, the People respectfully pray that this Court issue a:

___ warrant with bail in the amount of ___; ___ summons ___ notice to appear to bring the defendant before this Court for advisement on this Petition, and at said advisement set a hearing on this Petition, and that after such hearing, the Court enter an order revoking the sentence previously imposed on this defendant, and that the Court set this case for a resentencing hearing.

Nicole L. Villani
Nicole L. Villani Assistant State's Attorney

Sworn to before me this 30th day of June, 1999

Terry K. Hamber
Notary Public
Judge

06/25/00 14:06 FAX 618 482 9057 FED PUBLIC DEFENDER ESL 008

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
Jefferson COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff

Deonderyn L. Chambers Defendant

No. 99 CF 47

FILED
SECOND JUDICIAL COURT
JUN 30 1999
George Ruebenbach
CLERK OF THE CIRCUIT COURT
JEFFERSON COUNTY, ILLINOIS

SENTENCING JUDGMENT
ILLINOIS DEPARTMENT OF CORRECTIONS

The Court has considered the statutory factors required to impose sentence and FINDS:

1. The Defendant, whose date of birth is 7/7/[illegible], has been adjudged guilty of the offenses enumerated below.

☐ 2. That the conduct leading to the conviction for the offenses enumerated in Counts _____ caused great bodily harm to the victim (730 ILCS 5/5-6-3(a)(2)(iii)).

☐ 3. That the Defendant is convicted of a Class _____ offense but sentenced as a Class X offender (730 ILCS 5/5-5-3(c)(8)).

IT IS, THEREFORE, ORDERED, as follows:

A. That the Defendant be and is hereby sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense:

Count	Offense	Date of Offense	Statutory Citation	Class	Sentence	MSR*
I	Escape	12-27-98 to 1-19-99	720 ILCS 5/31-6(a)	3	5 Yrs. 0 Mos.	1

and said sentence shall run (concurrent with) (consecutive to) the sentence imposed in Counts _____

Count	Offense	Date of Offense	Statutory Citation	Class	Sentence	MSR*
					Yrs. Mos.	

and said sentence shall run (concurrent with) (consecutive to) the sentence imposed in Counts _____

Count	Offense	Date of Offense	Statutory Citation	Class	Sentence	MSR*
					Yrs. Mos.	

and said sentence shall run (concurrent with) (consecutive to) the sentence imposed in Counts _____

Count	Offense	Date of Offense	Statutory Citation	Class	Sentence	MSR*
					Yrs. Mos.	

and said sentence shall run (concurrent with) (consecutive to) the sentence imposed in Counts _____

☒ B. That the sentence(s) imposed on count(s) I be (concurrent with) (consecutive to) the sentence imposed in case number 99CF 57 in the Circuit Court of Jefferson County, be (concurrent with) (consecutive to) the sentence imposed in case number 98CF 17 in the Circuit Court of Jefferson County, be (concurrent with) (consecutive to) the sentence imposed in case number 98CF 118 in the Circuit Court of Jefferson County.

☒ C. That if the Defendant is accepted in the Impact Incarceration Program by the Illinois Department of Corrections, the Court approves placement of the Defendant in said program pursuant to the Supplemental Sentencing Order which is attached.

D. That the Defendant is entitled to receive credit for time actually served in custody as shown by the "Sheriff's Certificate of Time — Defendant Held in Custody" attached to this Judgment.

E. That the Clerk of the Court shall deliver a certified copy of this Judgment to the Sheriff who shall take the Defendant into custody and deliver him to the Department of Corrections to be confined until the expiration of the Defendant's sentence or until the Defendant is otherwise released by operation of law.

F. That the Department of Corrections withhold 33 % (per cent) (Percentage may not be more than 50%) of the inmate's monthly Corrections income and remit that amount to the Jefferson County Circuit Clerk for application to amounts due in this case for a total amount due of $ _____.

G. That this Judgment shall be effective immediately/stayed until July 8, 1999 at 9 A.M.

H. Defendant shall pay the costs of this matter within the term of the mandatory supervised release.

I. Other: _____

DATED: 6/30 1999

ENTER: Terry H. Hamber
PRESIDING JUDGE

*Mandatory Supervised Release

C:\CFORMS\CRIMINAL\JUDGORD.MOD

Rev. 4/8/98

06/25/99 14:06 FAX 618 482 9057 FED PUBLIC DEFENDER ESL 010

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT
JEFFERSON COUNTY, ILLINOIS

[Filed JUN 30, 1999]

Case No. 99-CF-47
99 CF 157
98 CF 109
98 CF 17

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

v.

DEONDERY L. CHAMBERS,
Defendant.

SUPPLEMENTAL SENTENCING ORDER IMPACT INCARCERATION PROGRAM

The Defendant has been found guilty and sentenced to the Illinois Department of Corrections as set forth on the "Sentencing Judgment — Illinois Department of Corrections" to which this Supplemental Sentencing Order is attached. The Court, having considered the provisions of 730 ILCS 5/5-8-1.1 FINDS:

1. That the Defendant meets the eligibility requirements of Section 5/5-8-1.1(b)1-6.

2. That the Defendant has consented in writing to participation in the Impact Incarceration Program and to the terms and conditions thereof as set forth on the attached Consent.

3. That this court recommends and approves this Defendant for placement in the Impact Incarceration Program.

IT IS THEREFORE ORDERED:

A. That the Defendant is sentenced to 7 years/ ~~months~~ in the Illinois Department of Corrections as set forth in the attached "Sentencing Judgment — Illinois Department of Corrections" to which this Supplemental Sentencing Order is attached.

B. That if the Department of Corrections accepts the Defendant in the Impact Incarceration Program and determines that the Defendant has completed the program, the Department of Corrections shall certify to this Court that the Defendant has successfully completed the Impact Incarceration Program.

C. That upon certification to the Court by the Department of Corrections that the Defendant has successfully completed the program, this sentence to the Illinois Department of Corrections shall be reduced to the time served by the Defendant in the Impact incarceration Program.

D. That if the Defendant is not accepted for placement in the impact Incarceration Program, or if the Defendant fails to successfully complete that program, the Defendant's term of imprisonment to the Illinois Department of Corrections shall remain as set forth in the Sentencing Judgment to which this Supplemental Order is attached.

Date: 6/30, 1999

ENTER: /s/ Terry H. Gamber
JUDGE

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT
JEFFERSON COUNTY, ILLINOIS

[Filed JUN 30, 1999]

Case No. 99-CF-47
99 CF 157
98 CF 109
98 CF 17

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

v.

DEONDERY L. CHAMBERS,
Defendant.

CONSENT TO PARTICIPATION IMPACT INCARCERATION PROGRAM

The undersigned Defendant, having been sentenced to 7 years/months in the Illinois Department of Corrections, does hereby state:

1. That I am between 17 and 35 years of age.

2. That I have not previously participated in the Impact Incarceration Program.

3. That I have not previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility.

4. That I have not previously been convicted nor is this offense for any of the following offenses: Class X Felony; First or Second degree murder; Armed violence; aggravated kidnaping criminal sexual assault,

aggravated criminal sexual abuse, forcible detention, arson, or a subsequent conviction for criminal sexual abuse.

5. That the term of imprisonment for which I am being sentenced is eight years or less.

6. That I am physically able to participate in strenuous physical activities or labor.

7. That I do not have any mental disorder or disability that would prevent participation in the Impact Incarceration Program.

8. That I am aware of the provisions of the impact incarceration program and the terms and conditions of said program.

9. That I consent to participation in the impact incarceration program and shall comply with all Department of Corrections rules and requirements of said program.

Dated: 6/30, 1999

/s/ Deondery Chambers
Defendant

EXECUTED in open court on the date set out above.

/s/ Terry H. Gamber
JUDGE

[LOGO]
Gary Duncan
State's Attorney
Jefferson County

Jefferson County Courthouse
Mount Vernon, Illinois 62864
Telephone: 618/244-8025
Fax: 618/244-7235

STATEMENT OF FACTS IN THE CAUSE PEOPLE VS. DEONDERY L. CHAMBERS, JEFFERSON COUNTY, IL CAUSE NUMBER 99-CF-47, (COUNT I-ESCAPE) (CLASS 3 FELONY).

06/30/99: Deondery L. Chambers entered a guilty plea to a petition to revoke probation and was sentenced to five (5) years in the Illinois Department of Corrections, with a one (1) year mandatory supervised release period. The sentence imposed in this cause runs concurrent with the sentence imposed in Jefferson County, IL cause number 99-CF-157. The sentence imposed in this cause also runs concurrent with the sentence imposed in Jefferson County, IL cause number 98-CF-17 and concurrent with the sentence imposed in Jefferson County, IL cause number 99-CF-109. The offense in Count I occurred from 11/27/98 to 12/18/98.

Deondery L. Chambers failed to report to the Jefferson County Jail, a penal institution, per order on 11/27/98, 12/04/98, 12/11/98 and 12/18/98.

02/24/99: Deondery L. Chambers pleaded guilty to Count I-Escape, a class 3 felony. Count II-Escape, a class 3 felony and Count III-Escape, a class 3 felony, were dismissed. Deondery L. Chambers was placed on thirty (30) months probation

06/30/99: A petition to revoke probation was filed due to the defendant's failure to successfully complete drug and alcohol counseling as ordered.

The judgment is stayed until July 8, 1999 at 9:00 a.m. at which time Deondery L. Chambers shall report to the Jefferson County Jail to await transportation to the Illinois Department of Corrections.

The defendant has been recommended for the impact incarceration program. See the paperwork in regard to impact incarceration.

/s/ Gary Duncan
GARY DUNCAN
Jefferson County State's Attorney

July 6, 1999

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT
JEFFERSON COUNTY, ILLINOIS

[Filed AUG 04, 1999]

No. 99-CF-47
99-CF-157
98-CF-17
98-CF-109

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

-vs-

DEONDERY CHAMBERS,
Defendant.

MOTION TO WITHDRAW GUILTY PLEA

NOW COMES the Defendant, Deondery Chambers, by his Attorney, Bob Verhines and moves this Court to withdraw his guilty plea in the above-captioned cause. In support, thereof defendant states as follows:

1. That on June 30, 1999, the defendant was sentenced in the above cause. That more than 30 days has passed, however counsel was not notified by defendant until after time had lapsed and Attorney client communication was hindered by defendant's incarceration.

2. That not more than 30 days have passed since the imposition of sentence on July 8, 1999.

3. That the defendant's plea of guilty was not knowing and voluntary because he did not realize the

approximate time to be spent in the Illinois Department of Corrections

4. That the defendant's plea of guilty was the result of misapprehension of law and fact.

5. Defendant's plea was not knowingly entered in that he did not understand the consequences of pleading guilty to a felony, but entered a plea to get out of jail.

WHEREFORE, defendant respectfully requests this Court to grant this motion to withdraw guilty plea.

/s/ Bob Verhines
BOB VERHINES
Jefferson Co. Public Defender

[LOGO]

Illinois Department of Corrections

George H. Ryan
Governor

Donald N. Synder
Director

Graham Correctional Center
R.R. #1, Highway 185
P.O. Box 499 Hillsboro, IL 62049
Telephone: (217) 532-6961
TDD: (800) 526-0844

October 21, 2002

Jefferson County
Jefferson County Courthouse
100 S. 10th Street
Room 105
Mt. Vernon, IL 62864

RE: Case #99-CF-157, 98-cf-109, 98-cf-17, 99-cf-47

Dear Sir:

Please be advised Inmate Deondery Chambers, K89251 was paroled from this facility on October 9, 2002.

We had been making Court Ordered payments for him on the above listed Case. We show a balance still due of $217.22, 1,767.73, 774.32, 824.33 respectively.

Upon his release, he gave the following forwarding address: c/o Shonda Neal, 1000 S. 6th, Mt. Vernon, IL 62864.

If you need any other information, please contact our Business Office at (217) 532-6961, Ext. 2228.

Sincerely,

/s/ Steven C. Bryant
Steven C. Bryant, Warden
Graham Correctional Center

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 1

FILED
MAY 16 2006
G. PATRICK MURPHY
DISTRICT JUDGE
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS, ILLINOIS

UNITED STATES DISTRICT COURT
Southern District of Illinois

UNITED STATES OF AMERICA
V.

DEONDERY LAZAR CHAMBERS, II
a/k/a Deondery L. Chambers

JUDGMENT IN A CRIMINAL CASE

Case Number: 05-40044-001-JLF

USM Number: 06730-025

Phillip J. Kavanaugh, Federal Public Defender
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:922(g)(1), 924(a)(2), 924(e)	Felon in Possession of a Firearm	May 31, 2005	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

May 12, 2006
Date of Imposition of Judgment

G. Patrick Murphy

Signature of Judge

G. Patrick Murphy, Chief Judge
Name and Title of Judge

05/16/06
Date

DEFENDANT: DEONDERY LAZAR CHAMBERS, II
CASE NUMBER: 05-40044-001-JLF

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

188 months

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DEONDERY LAZAR CHAMBERS, II
CASE NUMBER: 05-40044-001-JLF

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

5 years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 52 tests in a one year period.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DEONDERY LAZAR CHAMBERS, II
CASE NUMBER: 05-40044-001-JLF

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall pay any financial penalty that is imposed by this judgment, and that remains unpaid at the commencement of the term of supervised release. The defendant shall pay the fine in installments of $20.00 per month or 10% of his net monthly income, whichever is greater.

The defendant shall provide the probation officer and the Financial Litigation Unit of the United States Attorneys' Office with access to any requested financial information. The defendant is advised that the probation office may share financial information with the Financial Litigation Unit.

The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to the outstanding court-ordered financial obligation. The defendant shall immediately notify the probation officer of the receipt of any indicated monies.

The defendant shall participate as directed and approved by the probation officer in treatment for narcotic addiction, drug dependence, which includes urinalysis or other drug detection measures and which may require residence and/or participation in a residential treatment facility. Any participation will require complete abstinence from all alcoholic beverages. The defendant shall pay for the costs associated with substance abuse counseling and/or testing based on a co-pay sliding fee scale approved by the United States Probation Office. Co-pay shall never exceed the total costs of counseling.

The defendant shall submit his person, residence, real property, place of business, computer, or vehicle to a search, conducted by the United States Probation Officers at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: DEONDERY LAZAR CHAMBERS, II
CASE NUMBER: 05-40044-001-JLF

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$ 750.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case*(AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0	$ 0

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☒ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DEONDERY LAZAR CHAMBERS, II
CASE NUMBER: 05-40044-001-JLF

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payments are due immediately, through the Clerk of the Court, but may be paid from prison earnings in compliance with the Inmate Financial Responsibility Program. Any financial penalties that remain unpaid at the commencement of the term of supervised release shall be paid at the rate of $20.00 per month, or 10% of defendant's monthly net earnings, whichever is greater.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

No. 06-2405

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DEONDERY CHAMBERS,
Defendant-Appellant.

Argued Dec. 13, 2006
Decided Jan. 9, 2007
Rehearing and Rehearing En Banc
Denied Feb. 16, 2007.

Before POSNER, MANION, and EVANS, *Circuit Judges*.

POSNER, Circuit Judge.

The defendant pleaded guilty to being a felon in possession of a firearm. The judge, finding that the defendant had committed three crimes of violence previously, sentenced him to 188 months as an armed career criminal. 18 U.S.C. § 924(e). The only question presented by the appeal is whether one of those convictions, a conviction under Illinois law for escape, was indeed a crime of violence. The answer depends on whether escape "involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(1). A jail break does; but Illinois defines felonious escape not only as "intentionally escap[ing] from

a penal institution or from the custody of an employee of that institution" but also as "knowingly fail[ing] to report to a penal institution or to report for periodic imprisonment at any time." 720 ILCS 5/31-6(a). The defendant's escape was in the latter category—failing to report to a penal institution. The charging document is not in the record, but as summarized in the presentence investigation report and not challenged by the defendant it states that on four occasions he failed to report on schedule to a penal institution after being convicted for drug possession, robbery, and aggravated battery.

As an original matter, one might have doubted whether failing to report to prison, as distinct from escaping from a jail, prison, or other form of custody, was a crime that typically or often "involves conduct that presents a serious potential risk of physical injury to another." *United States v. Golden*, 466 F.3d 612, 616-17 (7th Cir.2006) (Williams, J., dissenting). You could show up an hour late (without an excuse) and be guilty of a felony that could result in your receiving a 15-year mandatory minimum sentence under the Armed Career Criminal Act. Had the defendant been sentenced without the enhancement, his guidelines sentencing range would have been 130 to 162 months. See U.S.S.G. §§ 2K2.1(a)(2), (b)(5), 3C1.2, 3E1.1(a), (b).

But the majority opinion in *Golden*, tracking our earlier opinion in *United States v. Bryant*, 310 F.3d 550 (7th Cir.2002), refused to carve the Illinois escape statute at the joint, as it were, but held instead that *any* violation of the statute is a crime of violence for purposes of the Act. The other courts of appeals, except the D.C. and Ninth Circuits, are in accord. *United States v. Winn*, 364 F.3d 7 (1st Cir.2004);

United States v. Luster, 305 F.3d 199, 202 (3d Cir.2002); *United States v. Jackson*, 301 F.3d 59, 63 (2d Cir.2002); *United States v. Turner*, 285 F.3d 909, 915-16 (10th Cir.2002); *United States v. Gay*, 251 F.3d 950 (11th Cir.2001) (per curiam); *United States v. Nation*, 243 F.3d 467, 472 (8th Cir.2001); *United States v. Ruiz*, 180 F.3d 675 (5th Cir.1999); *United States v. Harris*, 165 F.3d 1062, 1068 (6th Cir.1999); *United States v. Mitchell*, 113 F.3d 1528, 1533 (10th Cir.1997). The D.C. Circuit reserved the issue in *United States v. Thomas*, 333 F.3d 280, 282-83 (D.C.Cir.2003). See also *United States v. Adkins*, 196 F.3d 1112, 1119 (10th Cir.1999) (McKay, J., concurring), and Judge Rovner's concurring opinion in our *Golden* case. The Ninth Circuit ruled that a peaceful failure to return, followed by the defendant's turning himself in rather than being recaptured, is not a crime of violence. *United States v. Piccolo,* 441 F.3d 1084 (9th Cir.2006).

All these cases involved either a failure to return to a halfway house—a type of failing to return that seems even less violence-prone than failing to show up at prison, because a violent prisoner would be less likely to be serving a part of his sentence in a halfway house—or a "walkaway" escape, which does not involve breaking out of a building or wrestling free of guards. There would be no impropriety in dividing escapes, for purposes of "crime of violence" classification, into jail or prison breaks on the one hand and walkaways, failures to report, and failures to return, on the other. The sentencing judge would not have to dig beneath the charging document or the other, limited evidence on which a judge is permitted by *Shepard v. United States*, 544 U.S. 13, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005), to decide which bin a conviction for escape belonged in.

But we shrink from trying to overrule a decision that is only a few months old (*Golden* was decided on October 25, 2006), that tracked an earlier and materially identical decision of this court (*Bryant*), and that has overwhelming support in the decisions of the other circuits. The defendant has not presented us with arguments or evidence that were overlooked or unavailable in the previous cases. He cites us to *United States v. Hagenow*, 423 F.3d 638, 644-45 (7th Cir.2005), which held that because the offense of "confinement" in Indiana can be committed without endangering the person confined, the sentencing judge has to look behind the label of the defendant's conviction to see whether his conduct endangered anyone. But the defendant in this case is not asking for a deeper investigation into the circumstances of his failure to report. He is asking us to carve out noncustodial from custodial escape, and that is the move rejected in *Bryant* and *Golden*, as well as in the cases we cited from other circuits.

We shall adhere to the precedents for now. But it is an embarrassment to the law when judges base decisions of consequence on conjectures, in this case a conjecture as to the possible danger of physical injury posed by criminals who fail to show up to begin serving their sentences or fail to return from furloughs or to halfway houses. The head of the line of cases that lump all escapes together, *United States v. Gosling*, 39 F.3d 1140, 1142 (10th Cir.1994), states in colorful language quoted in many of the subsequent cases that "every escape scenario is a powder keg, which may or may not explode into violence and result in physical injury to someone at any given time, but which always has the serious *potential* to do so .... A defendant who escapes from a jail is likely to possess a variety of supercharged emotions, and in evading those

trying to recapture him, may feel threatened by police officers, ordinary citizens, or even fellow escapees .... [E]ven in a case where a defendant escapes from a jail by stealth and injures no one in the process, there is still a serious risk that injury will result when officers find the defendant and attempt to place him in custody." (Emphasis in original.) This is conjecture floating well free of any facts—even the facts of *Gosling*. The opinion says nothing about the nature of Goslin's escape, but the reference to escaping from a jail suggests that the court wasn't thinking about walkaway escapes, or failures to return or report, but about jail breaks (most jail breaks are stealthy). Its ruminations should not be treated as authoritative in a case that does not involve a jail break.

The Sentencing Commission, or if it is unwilling a criminal justice institute or scholar, would do a great service to federal penology by conducting a study comparing the frequency of violence in escapes from custody to the frequency of violence in failures to report or return. Should it turn out that the latter frequency is very low, this would provide a powerful reason to reexamine *Bryant* and *Golden*. Alternatively, Congress, which has investigative tools, might examine the issue with a view toward a possible clarification of 18 U.S.C. § 924(e)(1).

The most helpful analysis of escapes from United States prisons that we have found, Richard F. Culp, "Frequency and Characteristics of Prison Escapes in the United States: An Analysis of National Data," 85 *Prison J.* 270 (2005), unfortunately excludes from its study "walkaways from minimum-security facilities, failures to return from approved absences, and escapes from custody staff while being transported outside," *id.* at 275, although almost 90 percent of all

escapes are walkaways. *Id.* at 278; Camille Graham Camp & George M. Camp, "The Corrections Yearbook 1997" 18 (Criminal Justice Institute, Inc., 1997). And while the Culp study includes recaptures after an escape, it does not reveal whether a recapture involved violence. *Id.* at 281-82. More than 6 percent of the escapees committed crimes while on the lam, and many of these were violent crimes, *id.* at 285-86, but that is not evidence that escape itself is likely to be violent; for all that appears, the escapees were merely resuming their previous criminal careers. Six percent of the escapes in the study involved violence against prison staff, *id.* at 285—violence on the way out, as it were—but there is no indication of how many of the recaptures (some 75 percent of escaped prisoners are recaptured, *id.* at 282) involved violence. The study notes that records of prison escapes are not standardized and that recapture data are even less reliable than escape data. *Id.* at 271, 277, 281.

It is apparent that more research will be needed to establish whether failures to report or return have properly been categorized by this and most other courts as crimes of violence. Notice too that if courts insist on lumping all escapes together in determining whether escape is a crime of violence, the enormous preponderance of walkaways could well compel a conclusion that escape is never a crime of violence. Some disaggregation seems indicated, but to do it sensibly we judges need data.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

February 16, 2007

Before

Hon. Richard A. Posner, *Circuit Judge*

Hon. Daniel A. Manion, *Circuit Judge*

Hon. Terence T. Evans, *Circuit Judge*

No. 06-2405

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DEONDERY CHAMBERS,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Illinois.

No. 4:05-cr-40044-JLF

G. Patrick Murphy, *Chief Judge*.

ORDER

On January 22, 2007, defendant-appellant filed a petition for rehearing with suggestion for rehearing *en banc*, and on February 12, 2007, plaintiff-appellee filed an answer to the petition. All the judges on the origi-

nal panel have voted to deny the petition, and none of the active judges has requested a vote on the petition for rehearing *en banc*. The petition is therefore DENIED.